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Supreme Court of the United States

OCTOBER TERM, 1951

No. 522

JOSEPH BURSTYN, INC., APPELLANT,

vs.

LEWIS A. WILSON, COMMISSIONER OF EDUCATION OF THE STATE OF NEW YORK, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

FILED JANUARY 10, 1952

PROBABLE JURISDICTION NOTED FEBRUARY 4, 1952

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INDEX

| | Original | Print |
|--|----------|-------|
| Record on appeal to Court of Appeals of New York | 1 | 1 |
| Statement under Rule 234 | 1 | 1 |
| Order to show cause, Supreme Court | 3 | 1 |
| Petition | 6 | 3 |
| Exhibit "A"—Order to show cause before a designated committee of the Respondents, etc. | 15 | 8 |
| Exhibit "B"—Report of the Committee of the Whole | 17 | 10 |
| Supporting affidavit of Joseph Burstyn | 20 | 12 |
| Answer | 28 | 17 |
| Special Term Exhibit 1—Report of the Committee of the Whole | 42 | 25 |
| Special Term Exhibit 2—Order to show cause directed to Joseph Burstyn, Inc. | 44 | 27 |
| Special Term Exhibit 3—Order to show cause directed to Lopert Films, Inc. | 47 | 28 |
| Special Term Exhibit 4—Minutes of meeting, January 30, 1951 | 50 | 30 |
| Special Term Exhibit 5—Statement of John C. Farber, counsel for Joseph Burstyn | 63 | 39 |

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEB. 20, 1952.

Statement under Rule 234—Continued

Answer—Continued.

| | Original | Print |
|--|----------|-------|
| Special Term Exhibit 6—Affidavit of Joseph Bur- | | |
| styn | 66 | 42 |
| Exhibit 1—Translation of statement dated | | |
| December 30, 1950 of The Office of the | | |
| President of the Council of Ministers | 73 | 46 |
| Exhibit 2—Translation of statement dated | | |
| December 30, 1950 of the President of the | | |
| Italian Motion Picture Industry | 75 | 47 |
| Exhibit 3—Translation of affidavit dated De- | | |
| cember 30, 1950 of Director of the Venice | | |
| Film Festival | 78 | 48 |
| Special Term Exhibit 7—Report of the Committee | | |
| dated February 15, 1951 on "The Miracle" | 79 | 48 |
| Special Term Exhibit 8—Report dated February | | |
| 16, 1951 of the Committee of the Whole | 87 | 54 |
| Special Term Exhibit 9—Answer to Ephraim S. | | |
| London from Charles A. Brind, Jr., dated Janu- | | |
| ary 23, 1951 and letter from Ephraim S. Lon- | | |
| don to Charles A. Brind, Jr., dated January | | |
| 22, 1951 | 90 | 56 |
| Special Term Exhibit 11—Order transferring | | |
| proceeding to appellate division | 98 | 60 |
| Special Term Exhibit 12—Italian dialogue, Eng- | | |
| lish translation and English subtitles | 101 | 61 |
| Stipulation of facts | 130 | 86 |
| Notice of appeal to Court of Appeals, Supreme | | |
| Court | 133 | 86 |
| Order of Appellate Division appealed from | 137 | 87 |
| Opinion of Appellate Division, Foster, P.J. | 139 | 88 |
| Stipulation with respect to exhibits in Court of Ap- | | |
| peals | 149 | 95 |
| Description of exhibits and excerpts | I | 95 |
| Exhibit 6—Article in a symposium in THE | | |
| CHURCHMAN | 5 | 114 |
| Exhibit 7—Letter dated January 29, 1951 from | | |
| Rev. John Dillenberger, Evangelical Reformed | | |
| Church to Board of Regents | 16 | 122 |
| Exhibit 8—Letter dated January 29, 1951 from | | |
| Rev. Frederick T. Schumacher, Evangelical Re- | | |
| formed Church to Board of Regents | 18 | 123 |
| Exhibit 9—Letter dated January 25, 1951 from | | |
| Rev. Harold C. DeWindt, West Park Presby- | | |
| terian Church to Board of Regents | 19 | 124 |
| Exhibit 12—Letter dated January 26, 1951 from | | |
| Rev. W. J. Beeners to Board of Regents | 23 | 125 |
| Exhibit 13—Letter dated January 25, 1951 from | | |
| Rev. Albert J. Penner, Broadway Tabernacle | | |
| (Congregational) Church to Board of Regents | 24 | 126 |

Statement under Rule 234—Continued

Description of exhibits and excerpts—Continued

| Exhibits—Continued | Original | Print |
|--|----------|-------|
| Exhibit 14—Petition dated January 16, 1951 from 10 Clergymen to Board of Regents | 26 | 127 |
| Exhibit 16—Letter dated January 26, 1951 from Rev. Kenneth D. Barringer, First Methodist Church to Mr. Ephraim S. London | 28 | 128 |
| Exhibit 23—Letter dated January 26, 1951 from Prof. Paul Lehmann, Princeton Theological Seminary to Board of Regents | 42 | 129 |
| Exhibit 26—Petition dated February 1, 1951 to Board of Regents | 46 | 131 |
| Exhibit 34—Letter dated January 26, 1951 from Prof. W. T. Stace, Princeton University to Mr. London | 63 | 135 |
| Exhibit 53-A—Letter dated January 27, 1951 from Alfred H. Barr, Jr., Director of Museum of Modern Art to Herald Tribune | 90 | 137 |
| Exhibit 53-E—Letter dated February 1, 1951 from Rabbi B. J. Bamberger, West End Synagogue to Board of Regents | 96 | 138 |
| Exhibit 75—Editorial in the Washington, D. C. Post, December 31, 1950 | 150 | 139 |
| Exhibit 76—Editorial in the Boston, HERALD, Jan- uary 2, 1951 | 151 | 140 |
| Remittitur of the Court of Appeals | 153 | 141 |
| Judgment of the Supreme Court on Remittitur | 157 | 143 |
| Opinion of Court of Appeals, Froessel, J. | 162 | 144 |
| Concurring opinion, Desmond, J. | 178 | 158 |
| Dissenting opinion, Fuld, J. | 180 | 159 |
| Petition for appeal | 196 | 172 |
| Order allowing appeal | 197 | 173 |
| Citation on appeal (Omitted in printing) | 199 | |
| Assignment of errors | 201 | 173 |
| Praeceptum | 205 | 176 |
| Counter-praeceptum | 209 | 179 |
| Statement of points to be relied upon and designation of record | 213 | 180 |
| Counter designation of record | 221 | 184 |
| Order noting probable jurisdiction | 226 | 185 |

[fol. 1]

**IN SUPREME COURT OF STATE OF NEW YORK,
APPELLATE DIVISION, THIRD JUDICIAL DE-
PARTMENT**

In the Matter of

° The Application of JOSEPH BURSTYN, Inc., Petitioner,
For an Order Pursuant to Article 78 of the Civil Practice Act
against

LEWIS A. WILSON, Commissioner of Education of the State
of New York, and John P. Myers, William J. Wallin,
William Leland Thompson, George Hopkins Bond, W.
Kingsland Macy, Edward R. Eastman, Welles V. Moot,
Caroline Werner Gannett, Roger W. Straus, Dominick F.
Maurillo, John F. Brosnan and Jacob L. Holtzmann, as
Regents of the University of the State of New York,
Respondents

Statement Under Rule 234

Proceeding to review, pursuant to Article 78 of the Civil
Practice Act, a determination of the Commissioner of Edu-
cation and the Board of Regents of the University of the
State of New York, which cancelled and rescinded the
license issued on November 30, 1950, to Joseph Burstyn,
Inc., to show the motion picture "The Miracle."

[fol. 2] The parties are as stated above and there has not
been any change of parties or attorneys since the commence-
ment of this action on February 16, 1951.

[fol. 3] IN SUPREME COURT OF NEW YORK, COUNTY OF ALBANY

[Title omitted]

ORDER TO SHOW CAUSE—February 16, 1951

Upon the annexed petition of Joseph Burstyn, Inc., duly
verified the 16th day of February, 1951, upon the annexed
affidavit of Joseph Burstyn, sworn to February 14, 1951,
and upon all the papers and proceedings had herein,

Let the Respondents above named, Lewis A. Wilson, [fol. 4] Commissioner of Education of the State of New York, and John P. Myers, William J. Wallin, William Leland Thompson, George Hopkins Bond, W. Kingsland Macy, Edward R. Eastman, Welles V. Moot, Caroline Werner Gannett, Roger W. Straus, Dominick F. Maurillo, John F. Brosnan and Jacob L. Holtzmann, as Regents of the University of the State of New York, show cause at a Special Term of this Court to be held in and for the County of Albany at the County Court House, City of Albany, New York, on the 16th day of February, 1951, at three o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard *why* an order should not be made and entered herein granting a review under Article 78 of the Civil Practice Act of the determination and order of the said Respondents rescinding and cancelling the licenses heretofore issued for the exhibition of the motion picture films "The Miracle" and "Ways of Love" to the end that this Court on such review may annul the determination and order of the Respondents according to law and why Respondents and each of them, their deputies, agents and employees should not be restrained and enjoined from proceeding with the order rescinding and cancelling the licenses for the exhibition of the motion picture films "The Miracle" and "Ways of Love" and from enforcing the order and cancellation and revocation with respect thereto, and why the Petitioner should not have such other and further relief as this Court may deem just and proper.

Sufficient reason appearing therefor, let service of a copy [fol. 5] of this Order to Show Cause, together with the petition and affidavit annexed thereto, upon Charles A. Brind, Jr., Esq., attorney for the Respondents, on or before 2 P. M. of the 16th day of February, 1951, in accordance with Section 1289, 1951, in accordance with Section 1289 of the Civil Practice Act, be deemed good and sufficient service.

Dated: Albany, N. Y., February 16, 1951.

Kenneth S. MacAffer, Justice of the Supreme Court
of the State of New York.

[fol. 6]

IN SUPREME COURT OF NEW YORK

PETITION.—February 16, 1951

To the Supreme Court of the State of New York:

The petition of Joseph Burstyn, Inc., respectfully shows and alleges:

1. At all times hereinafter mentioned Petitioner was and still is a corporation organized under the laws of the State of New York.

2. At all times hereinafter mentioned Petitioner was and still is engaged in the business of distributing motion picture films, which business consists of purchasing motion picture films and the right to exhibit motion picture films publicly, and the leasing of films for profit to owners and operators of motion picture theaters throughout the United States and its territories.

3. The Respondent Lewis A. Wilson, is Commissioner of Education of the State of New York, the chief administrative officer of the Department of Education of the State of New York. The Respondents John P. Myers, William J. Wallin, William Leland Thompson, George Hopkins Bond, W. Kingsland Maey, Edward R. Eastman, Welles V. Moot, Caroline Werner Gannett, Roger W. Straus, Dominick F. Maurillo, John F. Brosnan, and Jacob L. Holtzmann are the members of the Board of Regents of the University of [fol. 7] the State of New York, which Board is the governing body of the University of the State of New York.

4. The Motion Picture Division of the Education Department of the State of New York (hereinafter referred to as "the Division") is an official body of the State of New York duly constituted and functioning under and by virtue of the provisions of Article 3 of the Education Law of the State of New York. Article 3 of the Education Law provides in part that the Division shall, upon submission of a motion picture film with the appropriate application for license and payment of prescribed fees, cause an examination of the motion picture film to be made and shall license such film to be exhibited at places of amusement, unless such film or a part thereof is obscene, indecent, immoral, inhuman or

4 7
sacrilegious, or is of such a character that its exhibition would tend to corrupt morals or incite to crime.

5. On March 2, 1940, a license, bearing serial number TA51033, was duly issued by the Division to Lopert Films, Inc., a New York Corporation, for the exhibition of a motion picture film with Italian dialogue, entitled "Il Miracolo" (hereinafter referred to under the English translation of that title, namely, "The Miracle").

6. Thereafter and prior to the times hereinafter mentioned, the Petitioner purchased from Lopert Films, Inc., the exclusive right to distribute and lease "The Miracle" for exhibition throughout the United States and its territories.

7. Thereafter Petitioner purchased the exclusive right [fol. 8] to distribute and lease the French language motion picture films entitled "Jofroi" and "A Day in the Country" for exhibition throughout the United States and its territories, and the Petitioner then combined the said films with "The Miracle" as a film trilogy under the title "Ways of Love."

8. On November 30, 1950, a license bearing serial number A42837 was duly issued to the Petitioner by the Division for the exhibition of the film trilogy "Ways of Love."

9. The issuance of the licenses for "The Miracle" and "Ways of Love" by the Division as aforesaid were administrative determinations that "The Miracle" is not sacrilegious, obscene, indecent, immoral, inhuman or of such character that its exhibition would tend to corrupt morals or incite to crime, and such determination was not arbitrary, unreasonable, unwarranted or unlawful.

10. Thereafter, and in reliance upon the issuance of the said license by the Division, the Petitioner expended considerable sums in preparing for the exhibition of the said film.

11. Thereafter and during the period from December 12, 1950, through December 22, 1950, and from December 29, 1950, to date, "Ways of Love" was exhibited publicly in the motion picture theater known as the Paris Theater, located at 4 West 58th Street, Borough of Manhattan, City of New York, pursuant to an agreement between the owner of said theater and the Petitioner, which agreement provides for

the payment to Petitioner of a stated percentage of the [fol. 9] amounts paid for admission to the Paris Theater during the exhibition of "Ways of Love."

12. The said film trilogy "Ways of Love" met with general public acclaim, and on December 27, 1950, it was designated the best foreign language film of 1950 by the New York Film Critics, an association of the motion picture film critics of all the major newspapers published in the City of New York.

13. Upon information and belief, on or about December 21, 1950, the Director of the Division was requested by one other than the Petitioner to reexamine "The Miracle" and said Director, after reexamining said film, stated that there was nothing objectionable in said film and that the same had been properly licensed.

14. On January 20, 1951, Petitioner was served with an order to show cause before a designated Committee of the Respondents (hereinafter referred to as "the Committee") why the aforesaid licenses issued to "The Miracle" and "Ways of Love" should not be rescinded and cancelled on the ground that "The Miracle" is sacrilegious. A copy of said order to show cause is annexed hereto and made part hereof as Exhibit A.

15. Petitioner appeared specially before the Committee on January 30, 1951, the return date of the aforesaid order to show cause, for the purpose of challenging the jurisdiction of the Board of Regents to revoke the aforementioned licenses, and to conduct any proceedings or hearings for that purpose on the grounds (1) that the Board of Regents has [fol. 10] no power or authority to revoke any license previously issued by the Division where there has been no abuse of the license or charge of wrongdoing on the part of the licensee; and (2) that the Committee was prejudiced in the matter, had predetermined the question of whether or not "The Miracle" is sacrilegious, and was reported in the public press as having announced its predetermination before opportunity was afforded for the submission of and before any evidence had been received by it.

16. On February 5, 1951, and with the consent of the Committee, Joseph Hirstyn as an individual submitted to the Committee an affidavit and 82 Exhibits, showing that "The

"Miracle" is ~~not~~ sacrilegious, and that there was a reasonable basis in fact for the aforementioned determinations by the Division that "The Miracle" is not sacrilegious.

17. No oral testimony was given at the aforementioned hearing conducted by the Committee on January 30, 1951, and Petitioner has not been served with and has not received copies of written evidence, if any, submitted to the Committee to support the charge that "The Miracle" is sacrilegious.

18. Thereafter and on February 16, 1951, Petitioner was notified that the Respondents determined that "The Miracle" is sacrilegious and directed the Respondent Lewis A. Wilson, as Commissioner of Education, to rescind and cancel the aforementioned licenses for the exhibition of "The Miracle" and "Ways of Love," etc. A copy of the findings and order are annexed hereto as Exhibit B.

[fol. 11] 19. The Petitioner will be immediately and irreparably damaged if the order of cancellation and rescission of the aforesaid licenses is not enjoined forthwith for no motion picture theater in the State of New York may publicly exhibit the said films without licenses for their exhibition.

20. Petitioner is aggrieved by the determination and action of the Respondents as follows:

(a) The Respondents, in determining that "The Miracle" is sacrilegious, exercised a judicial or quasi-judicial function and were without power, authority or right or jurisdiction to make such determination.

(b) The Respondent Lewis A. Wilson, Commissioner of Education of the State of New York, in directing the rescission and cancellation of the licenses issued for the exhibition of "The Miracle" and "Ways of Love" was exercising an administrative function, and was without power, authority, right or jurisdiction to issue any such order or to take any such action.

(c) The Respondents, in making the determination that "The Miracle" is sacrilegious, were exercising a judicial or quasi-judicial function and had no jurisdiction of the subject matter in the absence of any charge that there had been an abuse of the license for the exhibition of "The Miracle"

and "Ways of Love," and in the absence of any charge of wrongdoing on the part of the licensee.

(d) The aforementioned hearings and proceedings conducted by the Committee were not conducted pursuant to [fol. 12] any rule or regulation governing the conduct of such hearings or proceedings, and were unauthorized and improper.

(e) The actions taken by the Respondents in determining that "The Miracle" is sacrilegious and issuing the order annexed hereto as Exhibit C are unjust, arbitrary, unreasonable and unwarranted, and unconstitutional and said actions deprive Petitioner of its property rights in the aforesaid licenses without due process of law.

(f) The Respondents in determining that "The Miracle" is sacrilegious and issuing the order annexed hereto as Exhibit C acted in violation of law and the First, Fifth and Fourteenth Amendments of the Constitution of the United States and in violation of the Constitution of the State of New York.

(g) There was no competent proof of the facts necessary to be proved in order to warrant or authorize the determination of the Respondents that "The Miracle" is sacrilegious.

(h) There was no competent proof of the facts necessary to justify or warrant review and reversal by the Respondents of the initial determinations of the Division that "The Miracle" is not in fact sacrilegious.

Wherefore, Petitioner respectfully prays for a review under Article 78 of the Civil Practice Act of the determination and order of the Respondents rescinding and canceling the licenses issued for the exhibition of the films "The Miracle" and "Ways of Love"; and that an order be made requiring the Respondents to file their answer herein, and [fol. 13] to make and file a complete return before the Appellate Division of the Supreme Court, for the Third Judicial Department, to the end that said Court on such review may annul the determination and order of the Respondents, with costs and disbursements to the Petitioner, and that Petitioner have such other, further and different relief as to the Court may seem just and proper.

No previous application for the relief sought herein has been made, except that in an action for a Declaratory Judgment.

ment brought by Petitioner against the Respondents application was made for an order enjoining the Respondents from revoking, cancelling or rescinding the license issued for the exhibition of "Ways of Love" and from conducting any hearings or proceedings for that purpose; and said application was denied for the reason that it was prematurely made.

Application is made herein for an order to show cause for the reason that Petitioner seeks an order enjoining the enforcement of the order attached as Exhibit C pending the hearing of this application.

Dated, New York, February 16, 1951.

Joseph Burstyn, Inc., Petitioner, by Samuel E. Aronowitz, Attorney.

[fol. 14] *Duly sworn to by Samuel E. Aronowitz. Jurat omitted in printing.*

[fol. 15]

EXHIBIT A TO PETITION

THE UNIVERSITY OF THE STATE OF NEW YORK

The State Department of Education

Before the Commissioner

In the Matter of the Proceedings for the Rescinding and Cancellation of the License Dated November 30, 1950, Issued to JOSEPH BURSTYN, INC., for the Motion Picture Entitled "Ways of Love"

It appearing that at a meeting of the Board of Regents of the University of the State of New York held in the City of Albany on the 19th day of January, 1951, the following resolution was adopted:

"Notice shall be given forthwith to Lopert Films, Inc., licensee of the motion picture entitled 'Il Miracolo' under license dated March 2, 1949, and to Joseph Burstyn, Inc., licensee of the motion picture entitled 'Ways of Love' under license dated November 30, 1950, to show cause why each of such licenses should not be rescinded.

and cancelled on the ground that said pictures are and each of them is sacrilegious, the latter thereof as to that part of said Trilogy entitled 'The Miracle' at a hearing to be held before a Committee of the Board of [fol. 16] Regents consisting as follows: Chancellor Emeritus Wallin, Chairman, Regent Brosnan and Regent Holtzmann, on January 30, 1951, at 3:00 P. M. at the Association of the Bar of the City of New York, 42 W. 44th Street, New York, N. Y.

Such hearing will be restricted to the submission of affidavits and oral arguments and a brief by either or both of said licensees.

Any person or organization may mail or send a brief in this matter to the Chairman of the Committee at 30 S. Broadway, Yonkers 2, New York, prior to the hearing or deliver the brief at the hearing. It is requested that five copies of each brief be filed."

Now, Therefore, pursuant to the authority conferred upon me under the provisions of the Education Law, and by direction of the Board of Regents,

It is hereby ordered that Joseph Burstyn, Inc., as licensee of the motion picture entitled "Ways of Love" show cause at a hearing before a committee of the Board of Regents consisting of William J. Wallin, Chancellor Emeritus, Chairman, John F. Brosnan and Jacob L. Holtzmann, on January 30, 1951, at 3 P. M. at the Association of the Bar, 42 West 44th Street, New York City, why said license should not be rescinded and cancelled on the ground that said picture is sacrilegious.

In witness whereof, I, Lewis A. Wilson, Commissioner of Education of the State of New York, for and on behalf of [fol. 17] the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 19th day of January, 1951.

(Sign.) Lewis A. Wilson, Commissioner of Education. (Seal.)

EXHIBIT B TO PETITION

For Immediate Release

From the New York State Education Department

February 16, 1951.

Report of the Committee of the Whole

All members of the Board of Regents present at this meeting, and consisting of a majority of the entire Board, and a quorum thereof, sitting as a Committee of the Whole, having considered the report of the Committee on "The Miracle" and the affidavits, briefs and other documents filed therewith and all of such members of the Board of Regents having viewed such motion picture, now, after full discussion and deliberation, unanimously find and report:

That said motion picture, "The Miracle" is sacrilegious and not entitled to be licensed under the provisions of Section 122 of the Education Law and, therefore, it becomes the duty of this Board to rescind and cancel the licenses of this [fol 18] picture heretofore issued by the Motion Picture Division of the Department of Education.

Under the laws of our State, no picture (other than some specifically exempted by statute) may be shown unless it first has been licensed and the law expressly forbids the licensing of any picture that is, in whole or in part, sacrilegious. After viewing this picture, we have no doubt that it falls in the category condemned by law.

In this country where we enjoy the priceless heritage of religious freedom, the law recognizes that men and women of all faiths respect the religious beliefs held by others. The mockery or profaning of these beliefs that are sacred to any portion of our citizenship is abhorrent to the laws of this great State. To millions of our people the Bible has been held sacred and by them taught, read, studied and held in reverence and respect. Generation after generation have been influenced by its teachings. This picture takes the concept so sacred to them set forth in both the Protestant and Catholic versions of the Bible (St. Matthew, King James and Douay Versions; Chapter I, verses 18-25) and associates it with drunkenness, seduction, mockery and lewdness.

As to our power and authority to rescind the licenses, we unanimously adopted and approve the report of our Committee. We recognize that when the Legislature in 1927 placed the Motion Picture Division in the Department of Education, it placed upon us, as the constitutional head of that Department, the responsibility for its proper enforcement. The Regents neither sought nor welcomed such power of censorship. However, in this case, we have a clear and [fol. 19] compelling duty under the law to carry out our constitutional responsibility.

Therefore, the license issued by the Motion Picture Division on March 1, 1949, to Lopert Films, Inc. for the motion picture in the Italian language entitled "Il Miracolo" and the license issued on November 30, 1950, to Joseph Burstyn, Inc. for the Trilogy of films carrying the title "Ways of Love," which included the motion picture "The Miracle" should in all respects be canceled and rescinded. An application may be made to the Motion Picture Division for a license of so much of the Trilogy, "Ways of Love," as does not include the motion picture, "The Miracle."

Now, upon motion of the Vice Chancellor, it was unanimously

Resolved, that the motion picture "The Miracle" is a sacrilegious motion picture, not entitled to a license under the law; and it is

Further Resolved, that the license issued by the Motion Picture Division on March 1, 1949 to Lopert Films, Inc. for the motion picture "Il Miracolo" be and the same hereby is canceled and rescinded and that the license issued on November 30, 1950 to Joseph Burstyn, Inc. for the Trilogy, "Ways of Love," which included the motion picture "The Miracle" be and the same hereby, likewise is canceled and rescinded.

An application may be made to the Motion Picture Division for the licensing of so much of the Trilogy, "Ways of Love" as does not include "The Miracle."

[fol. 20] IN SUPREME COURT OF NEW YORK

SUPPORTING AFFIDAVIT OF JOSEPH BURSTYN—February 14,
1951

STATE OF NEW YORK,
County of New York, ss:

Joseph Burstyn, being duly sworn, deposes and says:

1. I am the President of the above named Petitioner, and make this affidavit in support of an application for a temporary injunction, restraining the Respondents from proceeding to revoke, rescind or cancel the licenses issued by the Motion Picture Division of the Department of Education for the films entitled "Il Miracolo" and "Ways of Love." The motion for an injunction is made on the grounds: (a) The Respondents have no power, authority or right to rescind, revoke or cancel the licenses; (b) even if such power existed, there is no justification for its exercise; and (c) unless the temporary injunction is granted Petitioner will suffer immediate and irrevocable damage.

2. On March 2, 1949, a license, bearing serial number TA51033, was duly issued by the Motion Picture Division of the Department of Education (hereinafter referred to as the Division) to Lopert Films, Inc., a New York Corporation, for the exhibition of a motion picture film with Italian dialogue, entitled "Il Miracolo" (hereinafter referred to under the English translation of that title, namely, [fol. 21] "The Miracle"). On behalf of the Petitioner, I purchased from Lopert Films, Inc., the exclusive right to distribute and lease "The Miracle" for exhibition throughout the United States and its territories, for a limited period. I also purchased for Petitioner the exclusive right to distribute and lease the French language motion picture films entitled "Jofroi" and "A Day in the Country" for exhibition throughout the United States and its territories, and then combined the said films with "The Miracle" as a film trilogy under the title "Ways of Love." On November 30, 1950, a license bearing serial number A42837 was duly issued to the Petitioner by the Division for the exhibition of the film trilogy "Ways of Love."

3. In reliance upon the issuance of the aforesaid licenses by the Division, the Petitioner expended considerable sums

in preparing for the exhibition of the said film, for the purposes of promotion and advertising in New York City. Thereafter and during the period from December 12, 1950, through December 22, 1950, and from December 29, 1950, to date, "Ways of Love" was exhibited publicly in the motion picture theater known as the Paris Theater, located at 4 West 58th Street, Borough of Manhattan, City of New York, pursuant to an agreement between the owner of said theater and the Petitioner, which agreement provides for the payment to Petitioner of a stated percentage of the amounts paid for admission to the Paris Theater during the exhibition of "Ways of Love."

4. "Ways of Love" met with general public acclaim, and [fol. 22] on December 27, 1950, it was designated the best foreign language film in 1950 by the New York Film Critics, an association of the motion picture film critics of all the major newspapers published in the City of New York.

5. Upon information and belief, on or about December 21, 1950, the Director of the Division was requested by one other than the Petitioner to re-examine "The Miracle" and said Director, after re-examining said film, stated that there was nothing objectionable in said film and that the same had been properly licensed.

On January 20, 1951, Petitioner was served with an order to show cause before a designated Committee of the Respondents why the aforesaid licenses issued to "The Miracle" and "Ways of Love" should not be rescinded and cancelled on the ground that "The Miracle" is sacrilegious. Petitioner appeared specially before the aforementioned Committee of the Regents on January 30, 1951, the return date of the aforesaid order to show cause, for the purpose of challenging the jurisdiction of the Board of Regents to revoke the aforementioned licenses. However, with the consent of the Committee, I submitted an affidavit with 82 Exhibits showing that the film is not sacrilegious. I am advised that the affidavit and exhibits will be returned to this Court by Respondents.

(A) The Respondents have no power, authority or right to rescind or cancel the licenses.

7. I am informed by my attorneys that the Respondents have no power or authority to rescind or cancel the licenses. [fol. 23] The Regents and the Commissioner of Education have only such powers as are conferred by legislative enactment and the Constitution of the State of New York. My attorneys have advised me that there is no statute or law of any kind authorizing the revocation of a motion picture license by the Respondents. Charles A. Brind, Jr., counsel for the Board of Regents, in a statement made when the aforementioned order to show cause was issued, said, "The law says nothing on the Regent's power to review when a license has been granted." (Report of Douglas Dale in the New York Times, January 20, 1951.)

8. The power to censor is alien to our traditions and our law. The Legislature, in enacting the Education Law of the State of New York, created a complete self-contained statutory system for the regulation of motion pictures in the State of New York and invested the Division with certain limited powers to censor motion picture films. The power to censor cannot be extended beyond the power embodied in the statute or extended to or appropriated by the Respondents by any other persons or any other body without specific legislative authorization—which concededly does not exist.

9. My attorneys have advised me further that the proposed action by the Respondents is unprecedented and there is no record of any such prior proceeding to rescind a film license. That also is confirmed in Mr. Brind's press release. (The source of my information is the report of Gordon Allison, published in the New York Herald Tribune January 20, 1951). The fact that Respondents' action is unprecedented and the fact that there is no statutory authority for the taking of such action at least raises doubt as to whether or not the power to take such action exists. Jacob L. Holtzmann, a Regent and one of the Respondents in this action, and himself an attorney, stated to the press on January 21, 1951, "A legal question exists as to whether or not the Board of Regents) can revoke the license of a film once it

has been granted by the Motion Picture Division." He later characterized that question as being "wide open."

10. From the foregoing it would appear that there is a question even in the minds of the Respondents, or some of them, with respect to their right and power to rescind the licenses. Despite that doubt, the Respondents are now attempting to exercise the authority to revoke the license of "The Miracle" and "Ways of Love."

(B) Assuming for the sake of argument, that Respondents have the power to rescind the Licenses issued for "Ways of Love" and "The Miracle," the proposed exercise of that power is unwarranted and improper.

11. "The Miracle" is and was intended to be the story of the abuse of a deep and simple faith. In twice licensing the film, the Division had to make and did make a determination that it was *not* sacrilegious. In attempting to revoke the license, the Respondents now assert that they consider it sacrilegious. Whatever the Respondents' individual views may be, they cannot deny that there is considerable justification for the opinion that the film is not a mockery of religious faith. The film was publicly exhibited in Rome, [fol. 25] where religious censorship exists, and it was not condemned. It was entered in the Venice Film Festival of 1948 without objection from the Vatican's representatives on the screening committee and on the Jury. Also, according to the report of Life Magazine (issue of January 15, 1951, at p. 69), the Vatican newspaper, "L'Osservatore Romano," in reviewing "The Miracle," made no criticism of it on religious grounds. (In passing, I must add that it would be strange indeed if there were greater religious tolerance in Italy than in the United States where religious freedom is part of our national heritage).

12. As previously stated, "The Miracle" was licensed twice by the Division, once separately, and again as a part of "Ways of Love," and the granting of such license constituted an affirmative finding that the film is not sacrilegious. It was passed by the United States Customs authorities when it was brought to America. It was approved and recommended by the National Board of Review. As appears in my aforementioned affidavit submitted to the Com-

mittee, Protestant ministers, and eminent authors, playwrights, educators, editors, publishers, radio commentators, artists, business executives, attorneys and economists, of the Roman Catholic, Protestant and Jewish faiths, have indicated that they do not consider the film sacrilegious. Film critics of all faiths also found "The Miracle" a devout and pious film.

13. In such circumstances, the finding of the administrative body which has special knowledge in the field, and which is charged with the duty of making such determinations, [fol. 26] may not be overruled by the Respondents because of a difference of opinion. That there was a reasonable basis for the Division's determination that the film is not sacrilegious must be conceded.

(C) Unless the injunction is granted, Petitioner will suffer immediate and irreparable damage.

14. Petitioner has expended thousands of dollars to obtain the rights to lease "Ways of Love" and "The Miracle" for exhibition in the United States, and after obtaining a license from the Motion Picture Division of the State of New York on November 30, 1950, and in reliance upon such license, Petitioner expended large additional sums for the purposes of advertising and promotion in the immediate New York area. If the Respondents revoke the license, subsequent reinstatement by the Court will not remedy the damage to the Petitioner. The films cannot be exhibited without a license—or while the license is suspended. The cumulative effect of the advertising, the critics' award and the critics' reviews will have been entirely dissipated. Also, as Petitioner's right to exhibit the film in the United States is limited in time, the time lost while the license is rescinded cannot be regained. Furthermore, the success of the film throughout the United States is largely dependent on the success of the first run in New York City and such run cannot be successful if interrupted. The Petitioner's entire investment and expectation of profit (greatly enhanced by the prize award) is thus jeopardized by the proposed action of the Board of Regents.

[fol. 27] 15. My own reputation, and consequently that of the Petitioner with which I am identified, is being damaged

by the proposed illegal procedure of the Board of Regents. I have been in the business of distributing foreign films for twenty years. I am known in the trade as a distributor of the best and most successful foreign language motion pictures. During the last five years I have distributed five prize-winning films, including "Open City," "Paisan," "The Quiet One" and "Bicycle Thief." If the Respondents should succeed in revoking the license, if only during the short period necessary for an appeal, my reputation as the film's distributor among the producers of films, whose receipts depend upon successful distribution, will be impaired.

In view of the foregoing, the Court is respectfully requested to grant the injunction requested until there can be a determination by a court of competent jurisdiction with respect to the Respondents' power or authority to revoke the licenses for the exhibition of the films.

Joseph Burstyn.

Sworn to before me this 14th day of February, 1951.
Ephraim London, Notary Public, State of New York. No. 31-7589800. Qualified in New York County. Cert. filed with N. Y. Co. Clk & Reg. Commission Expires March 30, 1952.

[fol. 28] IN SUPREME COURT OF NEW YORK, APPELLATE
DIVISION—THIRD DEPARTMENT

[Title omitted]

ANSWER—February 26, 1951

The respondents, by their attorney, Charles A. Brind, Jr., answering the petition of the petitioner herein respectfully allege:

First. Upon information and belief admits each and every allegation contained in the paragraphs of the petition numbered "1," "2," "3," "14," "17" and "18."

[fol. 29] Second. Upon information and belief, denies each and every allegation contained in the paragraphs of the petition numbered "9," "13," "19" and "20."

Third. Upon information and belief, admits each and every allegation contained in the paragraph of the petition numbered "4," except alleges that The Motion Picture Division of the Education Department of the State of New York, as such official body, is a division of the State Education Department under the jurisdiction of the Board of Regents of the University of the State of New York.

Fourth. Upon information and belief, denies each and every allegation contained in the paragraph of the petition numbered "5," except admits that on March 2, 1949, a license to exhibit a motion picture film with Italian dialogue, entitled "Il Miracolo," was issued by the Division to Lopert Films, Inc.

Fifth. The respondents answering the petition deny that they have any knowledge or information thereof sufficient to form a belief as to any of the allegations contained in the paragraphs of the petition numbered "6," "7" and "10."

Sixth. Upon information and belief, denies each and every allegation contained in the paragraph of the petition numbered "8," except admits that a license was issued to petitioner for the exhibition of the motion picture trilogy entitled "Ways of Love."

[Vol. 30] Seventh. The respondents answering the petition deny that they have any knowledge or information thereof sufficient to form a belief as to any of the allegations contained in the paragraph of the petition numbered "11," except, upon information and belief, admits that the motion picture trilogy entitled "Ways of Love" was exhibited publicly in the motion picture theatre known as the Paris Theater, located at 4 West 58th Street, Borough of Manhattan and City of New York.

Eighth. The respondents answering the petition deny that they have any knowledge or information thereof sufficient to form a belief as to any of the allegations contained in the paragraph of the petition-numbered "12."

Ninth. - Upon information and belief, denies each and every allegation contained in the paragraph of the petition numbered "15," except admits that petitioner appeared specially before the Committee on January 30, 1951.

Tenth. Upon information and belief, denies each and every allegation contained in the paragraph of the petition numbered "16," except admit that among others Joseph

Burstyn, as an individual, submitted to the committee an affidavit and exhibits.

Eleventh. Upon information and belief, denies each and every allegation contained in the petition heretofore not specifically admitted or denied.

[fol. 31] Further answering the petition and as a first separate and completed defense thereto, the respondents allege:

Twelfth. That the issuance of the licenses for the motion picture films entitled "Il Miracolo" and "Ways of Love," including "The Miracle," by the Division, was illegal.

Further answering the petition and as a second separate and completed defense thereto, the respondents allege:

Thirteenth. That the said film entitled "Il Miracolo" or "The Miracle" is sacrilegious. That there are millions of citizens in the State of New York to whom it is a matter of sacred religious belief and of truth related in the Holy Gospels that Jesus Christ is the son of God, born of the Virgin Mary, who is referred to as the Blessed Virgin; that she was married to St. Joseph; that she conceived Jesus through direct intervention of God, the Holy Ghost, and that she remained, before and after conception, a Virgin. That a description, in summary, of the said motion picture, "The Miracle," is as follows:

It tells the story of an unbalanced peasant girl who meets a stranger whom she thinks is St. Joseph. He is costumed in a manner similar to the traditional images of the Saint. He is bearded and wears garments such as were used in the Holy Land in the time of Christ.

This stranger makes the girl drunk with wine and in a most indecent manner seduces her. As a result she [fol. 32] conceives a child. Because of her drunken condition she believes conception was accomplished without carnal relations. Her belief is told to fellow townspeople who, while singing hymns to Mary, stage a mock procession in her honor. The girl is dressed in clothes caricaturing those worn in church processions honoring the Virgin Mary. Flowers are strewn in the girl's path, hymns are sung, and an old wash basin is

placed on her head to resemble a crown. The child she is carrying is addressed by the girl as "My God." The film concludes with a realistic and indecent portrayal of labor pains such as to have a most offensive effect and the birth of the child in a church.

Further answering the petition and as a third separate and completed defense thereto, the respondents allege:

Fourteenth. That the respondents, John P. Myers, William J. Wallin, William Leland Thompson, George Hopkins Bond, W. Kingsland Macy, Edward R. Eastman, Welles V. Moot, Caroline Werner Gannett, Roger W. Straus, Dominick F. Maurillo, John F. Brosnan, and Jacob L. Holtzmann, as Regents of the University of the State of New York, are vested, pursuant to article 5, section 4 and article 11, section 2 of the Constitution of the State of New York, and part 2 of article 3 of the Education Law, with the duty of licensing motion picture films and that pursuant to such duty and [fol. 33] authority said respondents are vested with the power, authority and jurisdiction to make the determination herein complained of.

Fifteenth. That respondent, Lewis A. Wilson, is the Commissioner of Education of the State of New York and in directing the cancellation of the license issued for the exhibition of "The Miracle" and "Ways of Love" was properly carrying out lawful order of the Board of Regents of the University of the State of New York.

Further answering the petition and as a fourth separate and completed defense thereto, the respondents allege:

Sixteenth. The hearing and proceedings, in this matter, were legally held pursuant to Section 206 of the Education Law.

Seventeenth. Returned herewith and made a part hereof are the following exhibits:

Special Term Exhibit 1. Report of the committee of the whole by Vice Chancellor Eastman.

Special Term Exhibit 2. Order to show cause, dated January 19, 1951, issued by the Commissioner of Education, directed to Joseph Burstyn, Inc.

Special Term Exhibit 3. Order to show cause, dated January 19, 1951, issued by the Commissioner of Education, directed to Lopert Films, Inc.

Special Term Exhibit 4. Transcript of hearing at the Association of the Bar, at the City of New York, held on January 30, 1951.

[fol. 34] Special Term Exhibit 5. Statement of John C. Farber, Esq., counsel for Joseph Burstyn, Inc., which was submitted in writing at the hearing on January 30, 1951.

Special Term Exhibit 6. Affidavit of Joseph Burstyn, verified February 2, 1951, containing 78 exhibits as follows:

Exhibit 1. Statement by number of the Italian Ministry, dated December 30, 1950.

Exhibit 2. Statement of the President of the Italian Motion Picture Industry, dated December 30, 1950.

Exhibit 3. Statement by Director of the Venice Film Festival, dated December 30, 1950.

Exhibit 4. Article from Life Magazine.

Exhibit 5. National Board of Review Weekly Guide for week ending December 16, 1950.

Exhibit 6. Article from "The Churchman," dated February 1, 1951.

Exhibit 7. Letter from John Dillenger, dated January 29, 1951.

Exhibit 8. Letter from Frederick T. Schumacher, dated January 29, 1951.

Exhibit 9. Letter from Harold C. DeWindt, dated January 25, 1951.

Exhibit 10. Affidavit of Lewis Kuester, verified January 26, 1951.

[fol. 35] Exhibit 11. Letter from Norman R. Farnum, Jr., dated January 25, 1951.

Exhibit 12. Letter from W. J. Beeners, dated January 26, 1951.

Exhibit 13. Letter from Albert J. Penner, dated January 25, 1951.

Exhibit 14. Petition from 10 clergymen to the Board of Regents, dated January 16, 1951.

Exhibit 15. Letter from L. Humphrey Walz, dated January 25, 1951.

Exhibit 16. Letter from Kenneth D. Barringer, dated January 26, 1951.

Exhibit 17. Letter from William H. Stevens, Jr., dated January 26, 1951.

Exhibit 18. Letter from John E. Smith, dated January 31, 1951.

Exhibit 19. Letter from Roland Emerson Haynes, dated January 26, 1951.

Exhibit 20. Letter from Merrill E. Bush, dated January 26, 1951.

Exhibit 21. Letter from Marian Schneider, dated January 31, 1951.

Exhibit 22. Letter from Samuel L. Terrien, dated January 31, 1951.

Exhibit 23. Letter from Paul Lehmann, dated January 26, 1951.

Exhibit 24. Letter from Mrs. Edward W. Pfluke, Jr., dated January 26, 1951.

Exhibit 25. Letter from Edward Darling, dated January 26, 1951.

[fol. 36] Exhibit 26. Letter from Rev. Solon D. Morgan, dated February 1, 1951, and statement of the Liberal Ministers' Club of New York, undated.

Exhibit 27. Letter from Laurence B. Holland, dated January 27, 1950.

Exhibit 28. Letter from Edward James Smythe, dated January 8th, 1951.

Exhibit 29. Letter from Gerald F. Weary, dated January 26, 1951.

Exhibit 30. Letter from Henry A. Culbertson, dated January 25, 1951.

Exhibit 31. Letter from Hugh Thomson Kerr, Jr., dated January 26, 1951.

Exhibit 32. Letter from H. H. Wilson, dated January 22, 1951.

Exhibit 33. Letter from Maurice A. Hall, dated January 25, 1951.

Exhibit 34. Letter from W. T. Stace, dated January 25, 1951.

Exhibit 35. Affidavit of Isidor B. Hoffman, verified February 1, 1951.

Exhibit 36. Letter from Sabert Basescu, dated January 24, 1951.

Exhibit 37. Letter from W. Freeman Galpin, dated January 27, 1951.

Exhibit 38. Letter from Georges A. Barrois, dated January 25, 1951.

Exhibit 39. Statement by H. W. Janson, dated December 28, 1950.

[fol. 37] Exhibit 40. Letter from John K. Sefcik, dated January 25, 1951.

Exhibit 41. Letter from Edward W. Mills, dated January 26, 1951.

Exhibit 42. Letter from John V. Watson, dated January 23, 1951.

Exhibit 43. Letter from Frank M. Dunn, Jr., dated January 26, 1951.

Exhibit 44. Statement by Edith Cobb, dated December 28, 1950.

Exhibit 45. Letter from Mary M. Bigelow, dated January 26, 1951.

Exhibit 46. Statement by Henry A. Singer dated December 30, 1950.

Exhibit 47. Letter from Bessie Jones, dated January 26, 1951.

Exhibit 48. Letter from Mrs. Harold B. Brinig, dated January 28, 1951.

Exhibit 49. Letter from Alfred S. Cole, dated January 26, 1951.

Exhibit 50. Letter from Rev. Byron O. Waterman, dated January 9, 1951.

Exhibit 51. Letter from Ernest F. W. Wildermuth, dated January 20th, 1951.

Exhibit 52. Letter from Gay Campbell, undated.

Exhibit 53-a. Article from New York Herald Tribune, dated January 30, 1951.

Exhibit 53-b. Letter from Kathleen C. Rogon, dated January 27, 1950.

[fol. 38] Exhibit 53-c. Letter from Jeremiah Y. Canoll, dated December 27, 1950.

Exhibit 53-d. Letter from Tiffany Thayer, dated December 30, 1950.

Exhibit 53-c. Letter from Bernard J. Bamberger, dated February 1, 1951.

Exhibit 54. Article from Magazine of Art, dated February, 1951.

Exhibit 55. Statement by Karl M. Chworowsky, dated January 15, 1951.

Exhibit 56. Text of Radio Broadcast by Harry Brager made January 28, 1951.

Exhibit 57. Text of Radio Broadcast by Bill Leonard made December 28, 1950.

Exhibit 58. Statement by J. Spencer Kennard, Jr., dated January, 29, 1951.

Exhibit 59. Statement by Donald Harrington, undated.

Exhibit 60. Article from the New Republic, dated January 1, 1951.

Exhibit 61. Article from The Nation.

Exhibit 62. Article from the N. Y. Times, dated February 1, 1951.

Exhibit 63. Article from Tomorrow.

Exhibit 64. Article from Wilmington, Del. News, dated January 23, 1951.

Exhibit 65. Article from N. Y. Times, dated January 2, 1951.

[fol. 39] Exhibit 66. Article from New York Post, January 16, 1951.

Exhibit 67. Article from Reading, Pa., Eagle, January 4, 1951.

Exhibit 68. Article from Daily News, December 13, 1950.

Exhibit 69. Two articles from N. Y. Times, January 29, 1951.

Exhibit 70. Two articles from New York Post, December 27, 1950.

Exhibit 71. Newspaper article.

Exhibit 72. Newspaper article.

Exhibit 73. Three newspaper articles.

Exhibit 74. Newspaper article, New York Post, December 26, 1950.

Exhibit 75. Article from Washington, D. C., Post, December 31, 1950.

Exhibit 76. Article from Boston Herald, January 2, 1951.

Exhibit 77. Article from New York Times, January 14, 1951.

Exhibit 78.° Article from New York Times, January 22, 1951.

Special Term Exhibit 7. Report of the Committee on The Miracle, dated February 15, 1951.

Special Term Exhibit 8. Report of the Committee of the Whole, dated February 16, 1951.

Special Term Exhibit 9. Letter from Ephraim S. London to Charles A. Brind, Jr., dated January 22, 1951, and [fol. 40] answer to Ephraim S. London from Charles A. Brind, Jr., dated January 23, 1951.

Special Term Exhibit 10. Memorandum decision by MacAffer, J., Supreme Court, Albany County, Special Term February 16, 1951.

Special Term Exhibit 11. Order signed by Justice MacAffer, dated February 20, 1951.

Special Term Exhibit 12. Italian dialogue, English translation and English sub-titles.

Objections in Point of Law

1. The Petition herein does not state facts sufficient to constitute a cause of action.

WHEREFORE, respondents pray for an order dismissing the petition herein on the merits; together with costs and disbursements, and for such other and further relief as to this Court may seem just and proper.

CHARLES A. BRIND, Jr.,
Attorney for Respondents,
Office and P. O. Address,
State Education Building,
Albany, New York.

[fol. 41] *Duly sworn to by Charles A. Brind, Jr., jurat omitted in printing.*

[fol. 42] - SPECIAL TERM EXHIBIT 1 TO ANSWER

The Chancellor stated that he had appointed a committee consisting of Chancellor Emeritus Wallin, Regent Brosnan and Regent Holtzmann to review the motion picture known as "The Miracle." A license for the exhibition of this picture then entitled "Il Miracolo" was issued on

March 2, 1949, to Lopert Films, Inc. Thereafter on November 30, 1950, a license to exhibit a motion picture consisting of a Trilogy entitled "Ways of Love" was issued to Joseph Burstyn, Inc. Included in this Trilogy is the motion picture "The Miracle." He also announced that the committee was ready to report and the matter was referred to the Committee of the Whole.

*Report of Committee of the Whole
By Vice-Chancellor Eastman.*

The committee of the Regents appointed by the Chancellor stated that it had reviewed the picture "The Miracle" at the offices of the Division of Motion Pictures in New York City on January 15, 1951 and that in the unanimous judgment of the committee the picture is sacrilegious.

After discussion the Committee of the Whole recommended and I move the adoption of the following resolution:

Notice shall be given forthwith to Lopert Films, Inc., licensee of the motion picture entitled "Il Miracolo" under license dated March 2, 1949 and to Joseph Burstyn, Inc., licensee of the motion picture entitled "Ways of Love" under license dated November 30, 1950 to show cause why each of such licenses should not be rescinded and cancelled on [fol. 43] the ground that said pictures are and each of them is sacrilegious, the latter thereof as to that part of said Trilogy entitled "The Miracle" at a hearing to be held before a Committee of the Board of Regents consisting as follows: Chancellor Emeritus Wallin, Chairman, Regent Brosnan and Regent Holtzmann; on January 30, 1951 at 3:00 P. M. at the Association of the Bar of the City of New York, 42 W. 44th Street, New York, N. Y.

Such hearing will be restricted to the submission of affidavits and oral arguments and a brief by either or both of said licensees.

Any person or organization may mail or send a brief in this matter to the Chairman of the Committee at 30 S. Broadway, Yonkers 2, New York, prior to the hearing or deliver the brief at the hearing. It is requested that five copies of each brief be filed.

[fol. 44] SPECIAL TERM EXHIBIT 2 TO ANSWER

Order to Show Cause.

(Seal)

THE UNIVERSITY OF THE STATE OF
NEW YORK.

THE STATE DEPARTMENT OF EDUCATION

Before the Commissioner

In the Matter of The Proceeding for the rescinding and cancellation of the license dated November 30, 1950, issued to JOSEPH BURSTYN, INC., for the motion picture entitled "Ways of Love."

It appearing that at a meeting of the Board of Regents of the University of the State of New York held in the City of Albany on the 19th day of January, 1951, the following resolution was adopted:

"Notice shall be given forthwith to Lopert Films, Inc., licensee of the motion picture entitled 'Il Miracolo' under license dated March 2, 1949 and to Joseph Burstyn, Inc., licensee of the motion picture on entitled 'Ways of Love' under license dated November 30, 1950, to show cause why each of such licenses should not be rescinded and cancelled on the ground that [fol. 45] said pictures are and each of them is sacrilegious, the latter thereof as to that part of said Trilogy entitled 'The Miracle' at a hearing to be held before a Committee of the Board of Regents consisting as follows: Chancellor Emeritus Wallin, Chairman, Regent Brosnan and Regent Holtzmann, on January 30, 1951, at 3:00 P. M. at the Association of the Bar of the City of New York, 42 W. 44th Street, New York, N. Y.

"Such hearing will be restricted to the submission of affidavits and oral arguments and a brief by either or both of said licensees.

"Any person or organization may mail or send a brief in this matter to the Chairman of the Commit-

tee at 30 S. Broadway, Yonkers 2, New York, prior to the hearing or deliver the brief at the hearing. It is requested that five copies of each brief be filed."

Now, THEREFORE, pursuant to the authority conferred upon me under the provisions of the Education Law, and by direction of the Board of Regents,

IT IS HEREBY ORDERED, that Joseph Burstyn, Inc., as Licensee of the motion picture entitled "Ways of Love" show cause at a hearing before a committee of the Board of Regents consisting of William J. Wallin, Chancellor Emeritus, Chairman, John F. Brosnan and Jacob L. Holtzmann, on January 30, 1951, at 3 P. M. at the Association of the Bar, 42 West 44th Street, New York City, why said license [fol. 46] should not be rescinded and cancelled on the ground that said picture is sacrilegious.

IN WITNESS WHEREOF, I, Lewis A. Wilson, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 19th day of January, 1951.

LEWIS A. WILSON

(Seal)

Commissioner of Education

Copy

[fol. 47] SPECIAL TERM EXHIBIT 3 TO ANSWER

Order to Show Cause

(Seal)

THE UNIVERSITY OF THE STATE OF NEW YORK

THE STATE DEPARTMENT OF EDUCATION

Before the Commissioner

In the Matter of the Proceeding for the rescinding and cancellation of the license dated March 2, 1949, issued to LOPERT FILMS, INC., for the motion picture entitled "Il Miracolo."

It appearing that at a meeting of the Board of Regents of the University of the State of New York held in the City

of Albany on the 19th day of January, 1951, the following resolution was adopted:

"Notice shall be given forthwith to Lopert Films, Inc., licensee of the motion picture entitled 'Il Miracolo' under license dated March 2, 1949 and to Joseph Burstyn, Inc., licensee of the motion picture entitled 'Ways of Love' under license dated November 30, 1950 to show cause why each of such licenses should not be rescinded and cancelled on the ground that said [fol. 48] pictures are and each of them is sacrilegious, the latter thereof as to that part of said Trilogy entitled 'The Miracle' at a hearing to be held before a Committee of the Board of Regents consisting as follows: Chancellor Emeritus Wallin, Chairman, Regent Brosnan and Regent Holtzmann, on January 30, 1951 at 3:00 P. M. at the Association of the Bar of the City of New York, 42 W. 44th Street, New York, N. Y.

"Such hearing will be restricted to the submission of affidavits and oral arguments and a brief by either or both of said licensees.

"Any person or organization may mail or send a brief in this matter to the Chairman of the Committee at 30 S. Broadway, Yonkers 2, New York, prior to the hearing or deliver the brief at the hearing. It is requested that five copies of each brief be filed."

Now, THEREFORE, pursuant to the authority conferred upon me under the provisions of the Education Law, and by direction of the Board of Regents,

IT IS HEREBY ORDERED that Lopert Films, Inc., a licensee of the motion picture entitled "Il Miracolo" show cause at a hearing before a committee of the Board of Regents consisting of William J. Wallin, Chancellor Emeritus, Chairman, John F. Brosnan and Jacob L. Holtzmann, on January 30, 1951, at 3 P. M. at the Association of the Bar, 42 West [fol. 49] 44th Street, New York City, why said license should not be rescinded and cancelled on the ground that said picture is sacrilegious.

IN WITNESS WHEREOF, I, Lewis A. Wilson, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my

hand and affix the seal of the State Education Department,
at the City of Albany, this 19th day of January, 1951.

(Seal)

(S) LEWIS A. WILSON
Commissioner of Education
Copy

[fol. 50] SPECIAL TERM EXHIBIT 4 TO ANSWER

Minutes of a Meeting of a Sub-Committee of the Board of Regents of the State of New York, Held at the Building of the Association of the Bar of the City of New York on January 30, 1951, at 3 P. M.

Present:

Chancellor Emeritus William J. Wallin, Chairman,
Regents John F. Brosnan and Jacob L. Holtzmann, and
Charles A. Brind, Jr., Esq.,
Counsel for the State Education Department.

The Chairman: The hearing is called to order. Counsel for the licensees are invited to take the tables here, if they care to do so. They are set apart for them and other chairs will be provided if they need them. You may push the tables together if you want to confer.

I would announce to counsel that we are a committee appointed to hear and report back to the Board of Regents. We have no other or further power. As we see it, there are two questions to be discussed. One is the power of the Board of Regents to revoke and the second is the factual question, is this picture, "The Miracle," sacrilegious?

There will be nobody heard except the licensees. Other people may file briefs. So far as the licensees and their counsel are concerned, we say that you may appear here specially, if you care to, for the purpose of challenging jurisdiction or otherwise, or inasmuch as we are seeking light on the matter, you may appear generally, and we will [fol. 51] stipulate on the record that all your legal rights are reserved with the same force and effect as if you had not appeared. If you make that your choice, we shall be glad to hear you.

Mr. John C. Farber: Whom do you wish to hear first?

The Chairman: Either of you.

Mr. Farler: My name is John C. Farber.

The Chairman: Yes. We are making a record, by the way, so the stenographer from time to time may stop you, if you go too fast.

Mr. Farber: I am appearing here specially on behalf of Joseph Burstyn, Inc., the licensee. I have prepared a statement, because I want the record to be just exactly what I have here. I am going to read the statement and then I will be glad to leave it with you.

I am appearing herein specially on behalf of Joseph Burstyn, Inc., and solely for the purposes hereinafter stated. In order that there may be no possible misinterpretation or misquotation of what is here said, I am reading this as a prepared statement.

The Chairman: You will file it, I assume, so you will make sure there is no misquotation.

Mr. Farber: Yes. I will file it.

On behalf of Joseph Burstyn, Inc., and appearing specially for that purpose, I challenge the jurisdiction of this committee and of the Board of Regents to conduct any hearings or further proceedings in this matter looking toward the revocation of the license duly issued to the film trilogy "Ways of Love," of which trilogy one film, "The Miracle," is a component part.

The bases of this challenge are that:

[fol. 52] (1) No power has been granted by the legislature to the Board of Regents to proceed in the manner in which it is now attempting to proceed.

(2) Under such cases as have been decided by the courts of the State of New York, determination has already been made that the Board of Regents is without power or authority to so proceed.

As you gentlemen are undoubtedly advised, an application was made to the Supreme Court in Albany County yesterday to enjoin the holding of this hearing upon the grounds just mentioned and, as you undoubtedly know, the court refused to grant a temporary restraining order. Having been advised only of the result of the determination made by Judge Elsworth by telephone, I am only able

to state what my understanding is of the grounds upon which he refused to grant the injunction. If my understanding is correct, the basis for his refusal to grant an injunction against the holding of this hearing is that the question of whether there is any power in the statute is open to doubt—with which position, of course, I do not agree—but in any event the question may become wholly academic, because the ultimate act of the Board of Regents, against which Joseph Burstyn, Inc., seeks protection—namely, the revocation of the existing license of the film—may never come to pass. Therefore, the court concluded that the application made on behalf of Joseph Burstyn, Inc., for an injunction was tainted with prematurity.

Being convinced that there is no authority in the statute [fol. 53] and that the courts of this state have held that the Board of Regents is without power to proceed in the manner in which it is proceeding, I respectfully move that the committee so hold and that no further action be taken by this committee at this time in this hearing with respect to Joseph Burstyn, Inc.

Is the committee prepared to rule on such motion, and, if so, how does it rule?

The Chairman: We are not prepared to rule, as we are still studying the matter. We have reached no conclusion.

Mr. Farber: Secondly, again appearing specially on behalf of Joseph Burstyn, Inc., and solely for the purpose hereinafter stated, I direct the attention of the committee to the fact that the order dated January 30 directs Joseph Burstyn, Inc., to show cause "why said license" (referring to the license granted to the motion picture entitled "Ways of Love") "should not be rescinded and cancelled on the ground that said picture is sacrilegious." The sole question which the order to show cause directs the committee to consider and make recommendations on is therefore whether the film is sacrilegious.

The order dated January 19, 1951, designates as the committee of the Board of Regents William J. Wallin, Chancellor Emeritus, as Chairman, John F. Brosnan and Jacob L. Holtzmann.

Douglas Dales, staff correspondent for the New York Times, has reported under date line of Albany, January

19, 1951, in the issue of the New York Times published January 20 that:

"The subcommittee viewed the film in New York City Monday. * * * The subcommittee reported its unanimous opinion that the picture was sacrilegious."

[fol. 54] Therefore, it is submitted that this committee has made a prejudgment of the issue with respect to which it was to receive evidence and, after the receipt and consideration of such evidence, made a determination; moreover, that it has publicly declared its judgment. In these circumstances, again appearing specially for Joseph Burstyn, Inc., and solely for that purpose, I move that this committee disqualify itself to conduct these hearings because of the fact that it has predetermined the issues without the submission of all the evidence.

Are you gentlemen prepared to rule with respect to this motion?

The Chairman: Denied on the ground there has been no predetermination and cannot be. The committee is not clothed with power. It is a committee to hear and report back only.

Mr. Farber: May I say that I anticipated that that would be the ruling, Mr. Chairman, and therefore I said I had prepared this as a prepared statement?

The Chairman: Very well.

Mr. Farber: In the circumstances and upon my advice, Joseph Burstyn, Inc., shall respectfully refuse to participate in the hearing and Joseph Burstyn, Inc., will not introduce any evidence in this hearing for the reasons hereinabove stated, and we are now withdrawing Joseph Burstyn, Inc., from the hearing.

The Chairman: Just a moment will you please Counsel? We think that inasmuch as your legal rights are fully protected by the stipulation, which we have offered to give, you may introduce evidence and submit a brief in the matter. You might at least be helpful in the solution of the [fol. 55] questions by submitting a brief and making an argument. It seems to me that, in view of the situation, it is a very technical position to take on behalf of your client,

if you do not afford us the opportunity to get the results of your studies in written form so that we may consider them.

Mr. Farber: Mr. Chairman, may I say that it is my greatest desire to be of assistance to this committee, to the Board of Regents and to anyone else who is involved in reaching a determination of the issues here involved. I consider that they are basic, that they are vital and that they affect a great many people in a great many directions. The difficulty that I have, very frankly, as I stated to Mr. Brind yesterday in Albany in the argument is this: It must be apparent that any determination which is made here, if we are to resolve the basic question which is involved, would be subject to review in the courts, and my difficulty, frankly, is how do I preserve for the record in an appellate court the position of a special appearance when, in spite of any stipulation on the record, one court, two courts, three courts removed, looking coldly at the record, may say, "Well, he protested that he appeared specially. The people before whom he appeared said he might appear specially, but he didn't; he appeared generally." Now, I realize, Mr. Holtzmann, that perhaps it may be—

Mr. Holtzmann: I don't follow you. I don't follow your reasoning. I just don't see your argument.

Mr. Farber: I know you don't, but the difficulty is that I [fol. 56] have seen this same thing happen in records on appeal where the courts have so ruled.

The Chairman: Well, we are not going to question it. You are advising your client.

Mr. Farber: I will be very glad if, after further consideration, Mr. Chairman, I am permitted to submit a brief.

The Chairman: How much time do you want?

Mr. Farber: Well, two or three days, perhaps. That is all I need.

The Chairman: We are seeking all the light we can get. Not later than the end of this week, if you see fit to submit a brief, you may do so, and we will receive it.

Mr. Farber: Thank you very much.

Mr. Ephraim London: My name is Ephraim London and I am appearing as counsel for Joseph Burstyn as an individual.

In view of the statement that you just made, I would

like to have a modification of your original decision and ask you to allow me to appear as attorney for Mr. Burstyn as an individual and not connected with the licensee, the corporation Joseph Burstyn, Inc.

The Chairman: He is not a party.

Mr. London: He is not a party, and that is why I asked for a modification.

The Chairman: We cannot allow any appearance except by the licensee. You may file a brief, however, if you care to, as any other person may who is interested in this matter, either financially or otherwise.

Mr. London: If this body is really seeking, and I am certain that it is, whatever evidence we have, whatever evidence we may submit without prejudicing the rights of the [fol. 57] licensee, it will hear me, because I am prepared to submit the evidence.

The Chairman: Wasn't that gentlemen who spoke first the attorney for the licensee?

Mr. London: He is the attorney for the licensee, yes.

The Chairman: And you are not the attorney for the licensee?

Mr. London: I want to make it clear that I am an attorney for the licensee but that I do not appear here as an attorney for the licensee.

The Chairman: We are not hearing people who do not appear for the licensee, but such people, including you and this gentlemen, may file a statement or a brief, if they wish to do so.

Mr. London: In that case, I must except to your decision and say that I regret that that is your decision.

The Chairman: Why do you regret it? So you can't talk? Do you know how many other people would want to talk? We would be here for a week.

Mr. London: Excepting you must realize that the position of the individual is very different from the position of any other person who may want to speak in this case. The individual's reputation is at stake here. It has been questioned, and he wants an opportunity to redeem it and to present the evidence for that purpose.

The Chairman: This is not the forum for that.

Mr. Holtzmann: Does he control the corporation, Mr. London?

Mr. London: He does. He is the sole stockholder.

[fol. 58] Mr. Holtzmann: If he is the sole stockholder, do you mean that you want him to come in here by one counsel and say, "We refuse to talk with you." We invited him to give us the benefit of his views. This question of jurisdiction is an open one, one that the Regents will have to decide. This committee will have the responsibility of making a recommendation on it or expressing its views on it, and we want just the evidence from Burstyn, Inc. He is called upon here to show cause why we should not take this action, to tell us that and to argue the point and help us reach a decision on this very important question as to the power and the jurisdiction of the Board of Regents. Now, I won't say it was a personal affront, but he took a position which, frankly, I do not understand. We said to him, or rather the Chancellor said, that he is fully protected, that his rights are fully protected, that it will be understood here now that he appears specially and that every right to question the jurisdiction of this committee and of the Regents will be fully recognized on the record, so that anyone here or in any future court can recognize it, but notwithstanding that fact he turned on his heel and walked out.

The Chairman: The rest of us do not feel any affront because he is standing on his legal rights. Let him walk out, if he chooses. I mean that there is no point about that. If your man is the chief stockholder and he is so jealous of his reputation, he can readily arrange that the counsel for the corporation appears and files its evidence and brief.

[fol. 59] Mr. London: Excepting that the point that Mr. Farber was making was precisely this: that no matter what stipulation is made on the record now, there is a possibility that an appellate court may take the position that the discussion of the merits will preclude a later claim that the appearance was special.

The Chairman: We understand that.

Mr. London: And there is justification for that opinion.

The Chairman: Probably so. He thinks so, anyhow, but, if there be, we cannot hear stockholders of the corporation when the corporation takes one position and they seek to establish what you call a personal reputation. No, that cannot be done. We will not hear you, but you may file a

statement or a brief, and inasmuch as you apparently came not prepared to do that, you may have the same time that we gave to the corporation.

Mr. London: May I have until Monday to submit an affidavit and a brief?

The Chairman: All right. Surely.

Mr. London: The Paris Theatre has also requested me to do the same.

The Chairman: We will be glad to get all the papers we can, all the enlightenment we can, on the questions that are raised, both legal and factual. Will you please tell the other counsel he may have the same time?

Mr. London: Yes, sir.

The Chairman: We thank you.

Mr. Peter Ippolito: Is that the last day for everyone to file, so that there will be no question? Is that the deadline for filing?

[fol. 60] The Chairman: That is the day for them to file. There is not a general interest but, as I said, a special interest in this controversy. We must have an end to this. We have enough briefs to tell us everything about it that we should know and how people feel. If there is a special interest involved in the event, we will have to give them that much time. Whom do you represent, sir?

Mr. Ippolito: Well, the point here is that, as a lawyer and as one who has already filed a brief and who would like to know what the deadline will be so that we won't have people coming in here next year and keeping this matter open for a great—

The Chairman: This is the date for two specific people who have now appeared. You have already filed your brief?

Mr. Ippolito: Yes.

Judge Goldstein: I want to say that I have also filed my brief, but since the attorney representing the licensee which the Department of Education, under Section 122, licensed, has seen fit to merely question the jurisdiction of this committee, I believe that as an attorney and as *amicus curiae* and as attorney for the Voluntary Public Defenders' Committee, which I represent, I would like to give this committee the benefit of what I know concerning the law and the facts, which the other attorneys have refused to

give, and in that respect, may it please this committee, I understand that this committee is in search of the verities. It is a question which had come up because of an order to show cause issued by the Board of Regents directed to the licensee, which the Department of Education issued after [fol. 61] viewing the film and did give a license under Section 122 and now issues an order, directed to the licensee, to show cause why the license should not be revoked on the ground that this picture is sacrilegious. I am prepared with evidence.

The Chairman: You got your speech in, anyhow, after I told you we weren't going to permit speeches. I say no, that we have to end it. We have given the public notice that the time to file briefs was at this time. The interested parties may do so. The record will show—and you may convey this, if you will, to our absentee counsel—that the committee here sitting viewed the motion picture "The Miracle" on Monday, the 15th day of January, 1951. The hearing is closed. Any of those present having briefs with them will please leave them at the entrance and the record will be made.

Judge Goldstein: Before you close the hearing, may I put on the record this: that I do not believe that the Department of Education and the subcommittee appointed by the Board of Regents can shut the door in the faces of those who come here to argue in favor of the revocation of this license, which I am now prepared to argue and to give proof and to give evidence quite apart from this committee having viewed the film? Your Honors, you are sitting as judges, and I must state to you gentlemen of the committee that you cannot act both as the judges and those in an evidentiary capacity. Now, there are others here who have viewed it and I have the law, which I would like to submit to you. I would like to submit Section 130, which gives you the right to revoke.

[fol. 62] The Chairman: We are not going to hear argument, Judge. You have filed your brief, as you had a right to do. The resolution of the Regents sets forth this: "Such hearing will be restricted to the submission of affidavits and oral arguments and a brief by either or both of said licensees. Any person or organization may mail or send

a brief in this matter to the chairman of the committee at 30 South Broadway, Yonkers, N. Y., prior to the hearing or deliver the brief at the hearing."

That is the rule under which we are working. There will be a record that no appearance is made on behalf of the original licensee.

Judge Goldstein: I wish to appear as in favor of the revocation of this license, and I give my name, Joseph Goldstein. I am a lawyer, and I am here for the purpose of appearing in favor of revoking this license, and I ask permission to state my grounds. Should this committee refuse to do so, that is very good.

The Chairman: It is denied. Now, you are not going to get past this committee, however many speeches you make, Judge. The rules are laid down for this procedure and we are following them. The hearing is closed.

[fol. 63] SPECIAL TERM EXHIBIT 5 TO ANSWER

*Statement of John C. Farber, Counsel for Joseph
Burstyn, Inc.*

Gentlemen:

I am appearing herein specially on behalf of Joseph Burstyn, Inc. and solely for the purposes hereinafter stated. In order that there may be no possible misinterpretation or misquotation of what is here said, I am reading this as a prepared statement (see p. 3).

On behalf of Joseph Burstyn, Inc. and appearing specially for that purpose, I challenge the jurisdiction of this committee and of the Board of Regents to conduct any hearings or further proceedings in this matter looking toward the revocation of the license duly issued to the film-trilogy "Ways of Love," of which trilogy one-film, "The Miracle," is a component part.

The bases of this challenge are that:

(1) No power has been granted by the legislature to the Board of Regents to proceed in the manner in which it is now attempting to proceed.

(2) Under such cases as have been decided by the courts of the State of New York, determination has

already been made that the Board of Regents is without power or authority to so proceed.

As you gentlemen are undoubtedly advised, an application was made to the Supreme Court in Albany County yesterday to enjoin the holding of this hearing upon the [fol. 64] grounds just mentioned and, as you undoubtedly know, the court refused to grant a temporary restraining order. Having been advised only of the result of the determination made by Judge Elsworth by telephone, I am only able to state what my understanding is of the grounds upon which he refused to grant the injunction. If my understanding is correct, the basis for his refusal to grant an injunction against the holding of this hearing is that the question of whether there is any power in the statute is open to doubt—with which position, of course, I do not agree—but in any event the question may become wholly academic, because the ultimate act of the Board of Regents, against which Joseph Burstyn, Inc. seeks protection—namely, the revocation of the existing license of the film—may never to come to pass. Therefore the court concluded that the application made on behalf of Joseph Burstyn, Inc. for an injunction was tainted with prematurity.

Being convinced that there is no authority in the statute and that the courts of this state have held that the Board of Regents is without power to proceed in the manner in which it is proceeding. I respectfully move that the committee so hold and that no further action be taken by this committee at this time in this hearing with respect to Joseph Burstyn, Inc.

Is the committee prepared to rule on such motion, and, if so, how does it rule?

Mr. Farber: Secondly, again appearing specially on behalf of Joseph Burstyn, Inc. and solely for the purpose hereinafter stated, I direct the attention of the committee to the fact that the order dated January 30, directs Joseph Burstyn, Inc. to show cause "why said license" (referring to the license granted to the motion picture entitled "Ways of Love") "should not be rescinded and canceled on the ground that said picture is sacrilegious." The sole question which the order to show cause di-

ffects the committee to consider and make recommendations on is therefore whether the film is sacrilegious.

The order dated January 19, 1951, designates as the committee of the Board of Regents William J. Wallin, Chancellor Emeritus, as Chairman, John F. Brosnan and Jacob L. Holtzmann.

Douglas Dales, staff correspondent for the New York Times, has reported under date line of Albany, January 19, 1951, in the issue of the New York Times published January 20 that:

"The subcommittee viewed the film in New York City Monday. * * * The subcommittee reported its unanimous opinion that the picture was sacrilegious."

Therefore it is submitted that this committee has made a prejudgment of the issue with respect to which it was to receive evidence and, after the receipt and consideration of such evidence, made a determination; moreover, that it has publicly declared its judgment. In these circumstances, again appearing specially for Joseph Burstyn, Inc. and solely for that purpose, I move that this committee disqualify itself to conduct these hearings because of the fact that it has predetermined the issues without the submission of all the evidence.

[fol. 66] SPECIAL TERM EXHIBIT 6 TO ANSWER

Affidavit of Joseph Burstyn.

THE UNIVERSITY OF THE STATE OF
NEW YORK.

THE STATE DEPARTMENT OF EDUCATION

In the Matter of The Proceeding for the Rescinding and Cancellation of the License dated November 30, 1950, Issued to JOSEPH BURSTYN, INC. for the Motion Picture entitled "Ways of Love."

State of New York,
County of New York, ss:

JOSEPH BURSTYN, being duly sworn, deposes and says:

1. I am President and sole stockholder of Joseph Burstyn, Inc., licensee of the film Ways of Love. To avoid prejudicing the rights of the corporate licensee, I am making this affidavit as an individual and not on behalf of the corporation. Permission to submit this affidavit and supporting evidence was granted by the Committee appointed by the Board of Regents to conduct hearings in the above matter.

2. My purpose in making this affidavit is to present evidence and material to support the two determinations by [fol. 67] the Motion Picture Division of the Board of Education that The Miracle is not sacrilegious. I am advised by my attorney that the Division's issuance of the licenses for the Miracle as a separate film on March 2, 1949, and for the Miracle as a part of the film trilogy Ways of Love on November 30, 1950, were administrative findings that the picture is in fact not sacrilegious. I am further advised that such determinations by the Division, an administrative body charged with the duty of making such findings, may not be overruled where there is a reasonable basis therefor.

3. The Motion Picture Division was under the supervision of different persons when each of the licenses was issued. When the license for The Miracle was first issued, Ward C. Bowen was the Director of the Division. in a

recent letter sent to the Paris Theater where the picture is being exhibited, Mr. Bowen stated that his reviewers did not find any serious objection to the film when they saw it in 1949. I believe Mr. Bowen saw the film himself and found no reason for denial of the license. Dr. Hugh Flick was Director of the Division when The Miracle was licensed in November, 1950, as part of Ways of Love. On December 22, 1950, eleven days after the first showing of the film, I was advised by Dr. Flick that he had been requested to re-examine The Miracle, and that after a re-examination, he found that the picture was not objectionable. The administrative findings in this case were, therefore, not the result of perfunctory review, but the carefully considered and reconsidered decisions of different eminently qualified experts in the field.

[fol. 68] 4. Certainly the text of the film is not sacrilegious. It is the story of a simple-minded peasant who is taken advantage of by a wayfarer she believes to be St. Joseph. In her simplicity she imagines that the child she bears was miraculously conceived. Those who condemn the picture (and I take comfort in the knowledge that the great majority of them have not seen it) interpret it as a parable and a mockery of the divine birth of Christ. The sacrilege then is in that interpretation and not in the story, or in the presentation. The picture is and was intended to be the story of the abuse of a deep and simple faith. That was the intent of the writer, the producer, director and the professional cast, all of whom are devout Roman Catholics. That was my understanding when I arranged for its distribution. That obviously was also the opinion of the censors who licensed the film.

5. As previously stated, so long as there is reasonable justification for the determination of the Division that the film is not sacrilegious, that determination may not be reversed. That there is considerable justification for the finding that the film is not sacrilegious is confirmed by the following: The film was publicly exhibited in Rome, where religious censorship exists, and it was not condemned. It was entered in the Venice Film Festival of 1948 without objection from the Vatican's representatives on the screening committee and on the jury. There will be submitted

with this affidavit an official statement by a member of the Italian Ministry to the effect that *The Miracle* was approved by the Italian Government for public presentation (Ex-[fol. 69] hibit 1); a statement of the President of the Italian Motion Picture Industry to the effect that government approval of the film could not have been secured if the film was considered blasphemous (Exhibit 2); and a statement by the Director of the Venice Film Festival that the film was exhibited there, and would have been rejected if considered blasphemous (Exhibit 3). Also, according to the report of *Life Magazine* (Exhibit 4), the Vatican newspaper, *L'Osservatore Romano*, in reviewing *The Miracle*, made no criticism of it on religious grounds.

6. *The Miracle* was passed by the U. S. Customs authorities when it was brought to America. It was approved and recommended, as a part of *Ways of Love*, by the National Board of Review of Motion Pictures. (The National Board is an independent, non-profit company organized in 1909 to promote the development of motion picture films. Its function is to review films and disseminate information about them to motion picture producers, exhibitors and public opinion/organizations.) *Ways of Love* was also widely acclaimed as an artistic triumph and received an award from the New York Film Critics as the best foreign language film of 1950. (The New York Film Critics is an Association of the motion picture critics of the major metropolitan newspapers, consisting of members of all religious faiths from the staffs of *The New York Times*, *The Herald-Tribune*, *The Daily News*, *The New York Post*, *The Journal-American*, *The Morning Telegraph*, *The Brooklyn Daily Eagle*, *The Compass* and *The Daily Worker*.) A great number of Protestant ministers, including Congregationalists, Presbyterians, Methodists, Unitarians, Episcopalians, and members of the Evangelical and Reformed Church, found that the film was not sacrilegious; and some believe it to be pious and reverent. Eminent theologians, educators, psychologists, motion picture and dramatic critics, curators of museums, artists, poets, publishers, authors, playwrights, editors, radio commentators, economists, and business executives of the Roman Catholic,

Protestant and Jewish Faiths, have made statements indicating that they found no objection to the film on religious grounds. Documentation will be found in the letters, newspaper and magazine articles, texts of radio broadcasts and sermons submitted herewith as exhibits. To facilitate examination of the numerous exhibits by the Regents, I am appending a list of the exhibits with extracts from some of them. The exhibits do not include all the data supporting the position taken herein. I have not included hundreds of favorable letters and innumerable articles published in periodicals throughout the civilized world. The Regents are, I am sure, aware of the general editorial condemnation of the first attempt to suppress *The Miracle*, and will undoubtedly recall many such items in local papers which, for practical reasons, are omitted.

7. In view of the foregoing, it must be conceded that there is a reasonable basis for the determinations by the Motion Picture Division that the film was not sacrilegious. At most there is merely a difference of opinion on that question, a difference which does not warrant revocation of the license. To my knowledge, all Protestant clergymen who have expressed themselves on the subject believe the film is not sacrilegious. As the exhibits indicate, there are prominent Roman Catholics who share that view. I have in my possession an affidavit alleging that two members of the Legion of Decency (the Roman Catholic organization that initiated the protest against the film) were not opposed to it. If requested I will forward the aforementioned affidavit to the Board of Regents. I have been advised by the owner of the world rights to the picture that it was rejected by a purchasing agent for Communist controlled countries on the ground that it was pro-Catholic propaganda. Even if the members of any single religion were unanimously opposed to the exhibition of the picture, it may not be banned on that ground, for that would be a violation of the constitutional guarantee of separation of church and state.

8. In conclusion, I respectfully urge the Committee of Regents and the Board of Regents to refrain from taking any action with respect to the license for *Ways of Love*. A rescission of the license would be an act of censorship un-

authorized in law, and an unwarranted restriction of the right of free expression and communication.

Joseph Burstyn.

Sworn to before me this 2nd day of February, 1951.
Ephraim London, Notary Public, State of New York. No. 31-7589800. Qualified in New York County. Cert. filed with N. Y. Co. Clk. and Reg. Commission Expires March 30, 1952.

[fols. 73-74] EXHIBIT 1, AFFIDAVIT OF JOSEPH BURSTYN
(Translation)

THE OFFICE OF THE PRESIDENT OF THE COUNCIL OF MINISTERS

I hereby declare that the film of Italian nationality—directed by Roberto Rossellini—entitled “Amore” (“The Human Voice”—“The Miracle”) was shown to the Commission for the Showing of Motion Pictures on August 19, 1948 and it was approved by the Commission on August 30th, 1948. Said film received approval (nulla osta) No. 4472 for presentation to the public as of August 30, 1948 in public auditoriums.

Sworn to before me this 30th day of December, 1950
Rome. (Signed) ———, General Director.

Mary Drago (Translator).

Sworn to before me this 11th day of January, 1951.
Betty Landgraf, Notary.

Betty Landgraf, Notary Public, State of New York. No. 41-7414700. Qualified in Queens County. Certs. filed with N. Y., and Kings Co. Clerks, Queens, N. Y. and Kings Co. Registers. Term expires March 30, 1952.

[fol. 75] EXHIBIT 2 TO AFFIDAVIT OF JOSEPH BURSTYN

(Translation)

Associazione Nazionale Industrie Cinematografiche
Ed Affini

Roma

Rome, December 30, 1950

Prot. 05248/M.

Re: Film "Miracolo" starring Anna Magnani, director Roberto Rossellini.

On request of the Tever Film, member of our Association, we herewith declare:

1) The film "Miracolo" obtained the regular "nulla osta" from the Government services of film censorship; the permits have never been withdrawn and are wholly valid, and consequently the film is freely circulating in all the normal theatres;

[fols. 76-77] 2) The Constitution of the Italian Republic, article 7, declares that the relations between the State and the Catholic Church are ruled by the Lateran agreements, in which it is clearly stated that the Italian State has the duty to suppress whatever action that may offend the Catholic Religion;

3) therefore, according to the present dispositions of the Italian Constitution and the Italian legislation, the "nulla osta" of censorship could in no way be granted to a film that might be considered blasphemous. If the censorship permit had been erroneously granted, the competent Authorities would have had the duty to withdraw it at any time.

The President, Sgd. (Avv. Eitel-Monaco).

Mary Drago (Translator).

Sworn to before me this 11th day of January, 1951.

Betty Landgraf, Notary Public, State of New York. No. 41414700. Qualified in Queens County. Certs. filed with N. Y. and Kings Co. Clerks. Queens, N. Y. and Kings Co. Registers. Term expires March 30, 1952.

[fol. 78] EXHIBIT 3 TO AFFIDAVIT OF JOSEPH BURSTYN

(Translation)

Venezia, December 30th, 1950.

S. Marco, Ca Giustinian—Tel. 28-110—27-858

La Biennale Di Venezia

Mostra Internazionale

D'Arte Cinematografica

Il Direttore

AFFIDAVIT

I herewith testify that the film "Miracolo," starring Anna Magnani, has been presented at the International Exhibition of Cinematographic Art of Venice in 1948 and that, in accordance with the regulations of the said Exhibition, in the case the film would have been in any way blasphemous, it would have been rejected by the Festival Committee.

Antonio Petrucci, Dr. Antonio Petrucci, Director.



[fol. 79] SPECIAL TERM EXHIBIT 7 TO ANSWER

THE UNIVERSITY OF THE STATE OF NEW YORK

THE STATE EDUCATION DEPARTMENT

*Report of the Committee on "The Miracle,"
February 15, 1951.*

To the Board of Regents:

On March 1, 1949, the Motion Picture Division of the State Education Department, on application of Lopert Films, Inc., licensed a motion picture in the Italian language, entitled "Il Miracolo." On November 30, 1950, the Division, on application of Joseph Burstyn, Inc., licensed

a Trilogy of three films, carrying the title "Ways of Love" which included the motion picture "The Miracle."

Soon after the showing of this picture at the Paris Theatre in New York City, the Education Department was fairly flooded with protests against its public exhibition. When this was followed by an unsuccessful attempt of local authorities to suppress the film by the maintenance of picket lines around the theatre in which it was exhibited and when the showing became a matter of public controversy, the Chancellor of the Board of Regents placed the matter on the agenda of the January meeting and, in the meantime, requested the undersigned three members of the Board to view the picture and be in a position to give to their colleagues their views.

The undersigned who had viewed the film described the picture to the Board and stated that in their opinion there was basis for the claim that the picture was sacrilegious. [fol. 80] So that a due and proper inquiry could be had on the question as to whether the Motion Picture Division issued the license illegally and if so whether it was in the power of the Regents to revoke same, the Board directed that the holders of the licenses be required to show cause, at a time and place fixed, why the licenses should not be rescinded and cancelled on the ground that the pictures are, and each of them is, sacrilegious. Chancellor Emeritus Wallin, Regent Brosnan and Regent Holtzmann were designated as a committee to conduct the hearing which was, under the order of the Board, restricted to the submission of affidavits and oral arguments and briefs by either or both of the licensees. However, opportunity was afforded to any organization or person who cared so to do to submit a brief. Lober Films, Inc., the holder of the first license, did not appear and later telegraphed that it had assigned its interest in the picture.

Joseph Burstyn, Inc., the holder of the later license that was issued November 30, 1930 for the picture "Ways of Love" and which included "The Miracle" appeared specially by counsel and challenged the jurisdiction of the Board of Regents and of the committee on the ground of lack of power or authority to proceed and without attempting to meet the merits of the controversy, withdrew from

further participation in the hearing. Counsel for Joseph Burstyn, individually, and sole stockholder of the licensee, Joseph Burstyn, Inc., submitted a lengthy affidavit and voluminous exhibits in an attempt to sustain his contention [fol. 81] that any action on the part of the Regents with respect to the license was unauthorized by law and "an unauthorized restriction of the right of free expression and communication." While most of the briefs submitted were in support of the Board's power and for revocation of the license, others confined their arguments to the desirability of the censorship of motion picture films, the validity or desirability of the standards of exclusion set forth in the law and some challenged the constitutionality of the statute involved.

It might be well to state at the outset the duty of the Board in connection with the licensing of a motion picture. Article III, Part II, of the Education Law (Sections 120 to 132 thereof), provides that there shall be in the Education Department a motion picture division, the head of which shall be a director who shall be appointed by the Regents. After exempting "current events," scientific, education and certain other films, the director or such other person authorized by the Regents is required to examine each motion picture film submitted to him and to issue a license therefor unless such film or a part thereof is "obscene, indecent, immoral, inhuman, sacrilegious, or is of such a character that to exhibit would tend to corrupt morals or incite to crime." It is made illegal to exhibit a picture in this State unless it has been licensed and the license number shown upon the screen and the law prohibits the granting of any motion picture license if it violates in whole or in part any one or more of the standards fixed by law.

The Board of Regents is the constitutional head of the Department and as such it is its duty to administer and enforce the law as it is enacted. By Chapter 153 of the [fol. 82] Laws of 1927, the Legislature saw fit to place the responsibility for the administration of this law in the Education Department and thus it has become the duty of the Regents to administer it as it is written. It must be emphasized that it is not within our jurisdiction to pass upon the wisdom of that law or upon its constitutionality, or

the validity or desirability of the standards of exclusion set forth therein. Those who argue on these points misconstrue entirely the powers and duties of the Regents in the pending matter.

We cannot sustain the challenge to the jurisdiction of the Board of Regents to act in this matter. As head of the Department of Education, it not only has the power, but the duty to inquire into the actions of one of its subordinates and to determine whether this act in issuing the license did or did not contravene the Law.

When the Legislature in 1927, by enacting Part II, of Article III of the Education Law, placed the Motion Picture Division in the Department of Education, it also placed the responsibility for all of the action of such division on the Regents. The legislature said so in so many words: "The Board of Regents shall have authority to enforce the provisions and purposes of Part II of this Article" (Section 132). But that grant of power was hardly necessary. The responsibility became that of the Regents by virtue of the Constitution of the State. Article V, Section 4, sets up the 19 departments of the State Government. The heads of 4 of these departments are fixed by the Constitution itself. The Governor is made the head of the Executive Department [fol. 83], the Comptroller is the head of the Department of Audit and Control, the Attorney General of the Department of Law and the Regents of the University of the State of New York are made the head of the Education Department.

Once the Legislature placed the Motion Picture Division in this Department it could not constitutionally divest the Regents either of the power or responsibility for functions lodged therein. The Legislature, in enacting the Education Law, recognized this constitutional mandate. Section 101 of the Education Law charges the Department with the general management and supervision of public schools, operations of the University of the State of New York and the exercise of all of the functions of the Education Department. It placed upon the Regents all the responsibilities "vested in such department or university or any sub-department, division or bureau thereof." It follows almost literally the words of the Constitution by saying: "The

head of the Department shall continue to be the Regents of University of the State of New York, who shall appoint and at pleasure remove the Commissioner of Education."

When Part II of Article III was written into the Education Law and set up the Motion Picture Division, it provided that the head of the Division shall be a director appointed by the Regents. Consonant with the general pattern of responsibility contained both in the Constitution and in the statute, the Regents were given the right to consolidate the Motion Picture Division with another division and permitted the assignment to the Division of the functions, powers and duties of other divisions, bureaus or [fol. 84] officers in the Department. The Regents were given the power in this section (120) to appoint such officers and employees as they deemed necessary and to prescribe their powers and duties. The very section dealing with licenses (122) does not limit the power to issue same to the Director of the Division, but provides that when authorized by the Regents, that power of licensing may be vested in other officers.

If any doubt existed as to the legislative intent to place the full responsibility of the administration of this statute by the Regents, it is dissipated by the words of Section 132, which not only gives the Regents the power to make all needful rules and regulations to carry out the purposes of the statute, but states that the Board "shall have authority to enforce the provisions and purposes of Part II of this Article."

We see no force in the argument that because there is a specific provision allowing an appeal from the denial of the Division to grant the license, it excludes a review by the head of the Education Department, on its own initiative, of the acts of one of its divisions in granting a license.

The statute prohibits the issuing of a license for the exhibition of a film, any part of which is o. ene, indecent, immoral, inhuman or *sacrilegious*. The granting of a license to a film that comes within this condemnation would be an illegal act. It is inconceivable that it was ever intended that the head of the Department could not have the power to vitiate an illegal act performed by any "sub-

department, division or bureau" under its supervision and for the acts of which it is by law specifically made responsible (Section 101).

[fol. 85] Prior to the enactment of Chapter 624 of the Laws of 1950, it might have been argued that under the authority of *Hughes Tool Company v. Fielding* (188 Misc. 947, aff'd 272 App. Div. 1048; aff'd 297 N. Y. 1024) there still remained a way of remedying the effect of an illegal act of the Division in licensing a prescribed film. It was held in that case that notwithstanding such a license, there still could be a criminal prosecution for showing a film which violated the law. Such remedy, if any, no longer exists since the Legislature in 1950 by Chapter 624 amended Section 1141 of the Penal Law so as to give complete immunity from criminal prosecution for the exhibition of any motion picture which bears the State's seal of approval.

We cannot follow an argument that would leave the Regents, the head of the Department, powerless to remedy a situation so impossible.

The licensee quotes a recent decision of the Appellate Division, First Department, *D. & D. Realty Corp. v. Coster, et al.*, N. Y. Law Journal, February 5, 1951, as an authority in support of its contention that the action in granting the license is not subject to reconsideration. In our opinion this case is not here applicable. The question is whether an act was or was not illegal. It is clear from a reading of that decision that the illegality of an act takes it out of the operation of the rule there laid down. It needs but a reading of the decisions quoted in the opinion in that case by Mr. Justice Van Voorhees to show that these cases are really authority in support of the right of the Regents to conduct the inquiry.

[fol. 86] Judge Cardozo in the case of *Matter of Equitable Trust Company v. Hamilton*, 226 N. Y. 241 (at 244), laid down the rule that the same administrative body that acted on a matter before it may rescind that action for a misconception of the merits and that even a later board may rescind for illegality. The other case, *People ex rel. Finnigan v. McBride*, 236 N. Y. 252, involved the question of the right of a civil service commission to cancel an eligible list. To

the argument that it had no legal power so to do even where the list was illegally promulgated, Judge Pound said, at page 257:

“... * * that the establishment of an illegal list sanctifies it in the presence of its own creator seems an impotent conclusion.”

In any event, the Board of Regents, as the responsible head of the agency passing on the application for license, has not acted before.

The Regents neither sought nor welcomed the placing in them of the power of censorship of motion pictures. When, however, our duty becomes clear under the law we will carry out our constitutional responsibility.

We see no legal obstacle to the Regents proceeding to the consideration of the main question in issue, namely: whether the license to the film “The Miracle” was or was not granted illegally.

We recommended that the members of the Board of Regents, as a Committee of the Whole, should view such motion picture and we arranged to have it available for them to do so. This they have done.

[fol. 87] We submit herewith the transcript of the hearing and all the affidavits and briefs which were filed with us.

Respectfully submitted, William J. Wallin, John F. Brosnan, Jacob L. Holtzmann.

Dated, February 15, 1951.

SPECIAL TERM EXHIBIT 8 TO ANSWER

For Immediate Release

From the New York State Education Department

Report of the Committee of the Whole, February 16, 1951

All members of the Board of Regents present at this meeting, and consisting of a majority of the entire Board, and a quorum thereof, sitting as a Committee of the Whole, having considered the report of the Committee on “THE

MIRACLE" and the affidavits, briefs and other documents filed therewith and all of such members of the Board of Regents having viewed such motion picture, now, after full discussion and deliberation, unanimously find and report:

That said motion picture, "THE MIRACLE," is sacrilegious and not entitled to be licensed under the provisions of Section 122 of the Education Law and, therefore, it becomes [fol. 88] the duty of this Board to rescind and cancel the licenses of this picture heretofore issued by the Motion Picture Division of the Department of Education.

Under the laws of our State, no picture (other than some specifically exempted by statute) may be shown unless it first has been licensed and the law expressly forbids the licensing of any picture that is, in whole or in part, sacrilegious. After viewing this picture, we have no doubt that it falls in the category condemned by law.

In this country where we enjoy the priceless heritage of religious freedom, the law recognizes that men and women of all faiths respect the religious beliefs held by others. The mockery or profaning of these beliefs that are sacred to any portion of our citizenship is abhorrent to the laws of this great State. To millions of our people the Bible has been held sacred and by them taught, read, studied and held in reverence and respect. Generation after generation have been influenced by its teachings. This picture takes the concept so sacred to them set forth in both the Protestant and Catholic versions of the Bible (St. Matthew, King James and Douay Versions, Chapter I, verses 18-25) and associates it with drunkenness, seduction, mockery and lewdness.

As to our power and authority to rescind the licenses, we unanimously adopt and approve the report of our Committee. We recognize that when the Legislature in 1927, placed the Motion Picture Division in the Department of Education, it placed upon us, as the constitutional head of that Department, the responsibility for its proper enforcement. [fol. 89] The Regents neither sought nor welcomed such power of censorship. However, in this case, we have a clear and compelling duty under the law to carry out our constitutional responsibility.

Therefore, the license issued by the Motion Picture Divi-

sion on March 1, 1949, to Lopert Films, Inc., for the motion picture in the Italian language entitled "Il Miracolo" and the license issued on November 30, 1950, to Joseph Burstyn, Inc. for the Trilogy of films carrying the title "Ways of Love," which included the motion picture "THE MIRACLE" should in all respects be canceled and rescinded. An application may be made to the Motion Picture Division for a license of so much of the Trilogy, "Ways of Love," as does not include the motion picture, "THE MIRACLE."

Now, Upon motion of the Vice Chancellor, it was unanimously

RESOLVED, that the motion picture, "THE MIRACLE" is a sacrilegious motion picture, not entitled to a license under the law; and it is

FURTHER RESOLVED, that the license issued by the Motion Picture Division on March 1, 1949 to Lopert Films, Inc. for the motion picture "Il Miracolo" be and the same hereby is canceled and rescinded and that the license issued on November 30, 1950, to Joseph Burstyn, Inc., for the Trilogy, "Ways of Love" which included the motion picture "THE MIRACLE" be and the same hereby, likewise is canceled and rescinded.

[fol. 90] An application may be made to the Motion Picture Division for the licensing of so much of the Trilogy, "Ways of Love" as does not include "THE MIRACLE."

SPECIAL TERM EXHIBIT 9 TO ANSWER

Answer to Ephraim S. London from Charles A. Brind, Jr.,
January 23, 1951

January 23, 1951.

Ephraim S. London, Esq., London, Simpson & London, 150
Broadway, New York 7, N. Y.

Dear Mr. LONDON:

This acknowledges receipt of your letter of January 22.

I would assume that the committee appointed by the Regents will follow the same practice that has been in effect with respect to motion picture hearings in the past. The

hearing will consist of the presentation of oral argument by the parties concerned and the submission of any affidavits by way of evidence or any documents which they desire to submit.

The technical rules of evidence in respect to the authentication of the documents is not insisted upon, although I presume that the more authority back of them, the more weight they would probably have.

[fol. 91] You would have the legal right, in appearing before the committee, to reserve all of your rights in respect to the challenge of the committee's jurisdiction. This would mean that if the decision is adverse to you and you initiate a proceeding under Article 78 of the Civil Practice Act to review the action of the Regents, the fact that you acquiesced in the hearing before the Regents would not preclude you from raising any technical or legal objection which you believe are pertinent to you.

You ask about the procedure before the Regents in respect to the adoption of the resolution, copy of which was contained in the order to show cause, which you have. You will appreciate that the action of the Regents was merely authorization for the appointment of the committee and the committee's authority to conduct a hearing. The Regents have power to conduct a hearing in respect to any matter under their jurisdiction under the Education Law. No decision was made in any way by the Regents concerning whether they have power to rescind the present license, or whether the facts would warrant such a rescission. Such an action by the Regents will need to await the recommendation of its committee. The vote on the aforesaid resolution was unanimous, all Regents were present except Mr. Straus and Mrs. Gannett who were out of the State.

I have discussed with Mr. Wallin, Chairman of the Committee, the proposal contained in the last paragraph of your letter. He advised me that he does not believe his Committee has authority to submit the controversy to the Appellate Division upon an agreed statement of fact. For that [fol. 92] reason, the Committee will, therefore, need to proceed with the hearing as planned.

Sincerely yours, Charles A. Brind, Jr.

B:G

Letter from Ephraim S. London to Charles A. Brind, Jr.,
January 22, 1951

LONDON, SIMPSON & LONDON
Counselors at Law
150 Broadway
New York 7
Telephones
0043
Worth 2-0044

January 22, 1951.

Charles A. Brind, Jr., Esq., State Education Building,
Albany 1, N. Y.

Re: License for Film "Ways of Love"

Dear Mr. Brind:

Thank you for forwarding the order to show cause to my home. This will confirm my advice to you in our telephone [fol. 93] conversation that I am authorized to accept service of such order for the licensee, Joseph Burstyn, Inc.

The licensee has not yet decided upon the action to be taken, but if it does appear at the hearing and submits evidence, I understand that there will be no insistence on strict compliance with technical rules of evidence; that letters, press clippings and unauthenticated documents will be acceptable. It is also my understanding that the appearance of the licensee at the hearing will not be deemed an acquiescence in the jurisdiction or authority of the Regents to revoke the license, nor of their right or authority to conduct the proposed hearings.

As there is no precedent for the proposed action by the Board of Regents, I assume there are no rules or regulations with respect to notice. I think ordinary fairness or the rules of due process would require that the licensee be apprised, in sufficient time to permit answer, of the reason or basis for the proposed action. I think it should also be advised of the number and names of the Regents present at the meeting at which the resolution was adopted and the number and names of those who voted in favor of the resolution, so that it may know whether a quorum was present, etc. Perhaps a transcript of the minutes of the meeting

will furnish the information. If so, please forward it to me and I will remit whatever fee is appropriate.

It appears from items in the newspapers that certain of the Regents, and even members of the sub-committee appointed to conduct the hearings, have some question with respect to the authority of the Regents to revoke the license. The licensee also questions that authority. I believe the [fols. 94-97] matter should be submitted to the court for determination in the first instance. That procedure may save the Board considerable time and expense. If the Regents will consider submitting the question to a court of appropriate jurisdiction before conducting the hearing, please telephone or wire me collect. In any event, I will appreciate your prompt reply to this letter.

Hoping you will forgive its length, I am,

Respectfully yours, Ephraim London.

L:M

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 98] SPECIAL TERM EXHIBIT 11 TO ANSWER

Order Transferring Proceeding to Appellate Division

At a Special Term of the Supreme Court held in and for the County of Albany, at the Court House, in the City of Albany on this 20th day of February, 1951.

Present: Hon. Kenneth S. MacAffer, Justice.

In the Matter of the Application of JOSEPH BURSTYN, INC.,
Petitioner,

For an Order pursuant to Article 78 of the Civil Practice
Act

against

LEWIS A. WILSON, Commissioner of Education of the State of New York, and John P. Myers, William J. Wallin, William Leland Thompson, George Hopkins Bond, W. Kingsland Macy, Edward R. Eastman, Welles V. Moot, Caroline Werner Gannett, Roger W. Straus, Dominick F. Maurillo, John F. Brosnan, and Jacob L. Holtzmann, as Regents of the University of the State of New York, Respondents

The Petitioner herein having made application by Order to Show Cause for an order against the Respondents herein [fol. 99] pursuant to Article 78 of the Civil Practice Act, and for an order enjoining the Respondents from rescinding and cancelling the licenses issued for the exhibition of the motion picture films "The Miracle" and "Ways of Love" and said motion having duly come on to be heard before this Court on February 16, 1951 and the attorneys for the respective parties hereto having orally stipulated upon the argument of the application that an order granting such review pursuant to Article 78 of the Civil Practice Act should be made.

Now, on reading and filing the Order to Show Cause dated February 16, 1951, the petition of Joseph Burstyn, Inc. verified February 16, 1951, together with exhibits thereto annexed and due deliberation having been had thereon,

Now, upon motion of O'Connor & Farber, Esqs., attorneys for Petitioner, it is

Ordered, that this proceeding be and it is hereby transferred for a disposition to the March term of the Appellate Division of the Supreme Court for the Third Judicial Department, and it is further

Ordered, that the Respondents serve upon the Petitioner and file with the Clerk of the Appellate Division of the Supreme Court for the Third Judicial Department their answer to the petition herein on or before February 27th, 1951 to which answer shall be annexed a certified transcript of the record of all proceedings subject to review and consideration therein, including all affidavits and other evidence submitted at the proceedings had by the Respondents, [fol. 100] And, upon reading and filing the affidavit of Joseph Burstyn sworn to February 14, 1951 in support of the motion for an order enjoining the Respondents herein from rescinding and cancelling the licenses issued for the motion pictures "The Miracle" and "Ways of Love"; and the Court having rendered and filed its opinion in writing with respect thereto on February 16, 1951.

Now, on motion of Charles A. Brind, Jr., Esq., attorney for the Respondents, it is hereby ordered that the application of the Petitioner for an order restraining and enjoining the Respondents from cancelling and rescinding the licenses theretofore issued by the Motion Picture Division of the Department of Education for the exhibition of the motion picture films "The Miracle" and "Ways of Love" be and the same hereby is denied without prejudice.

(S.) Kenneth S. MacAffer, Justice of the Supreme Court.

[fol. 101] SPECIAL TERM EXHIBIT 12 TO ANSWER

Italian Dialogue, English Translation and English Subtitles
STATE OF NEW YORK.

County of New York, ss:

"This Is To Certify that the attached is a photostatic copy of the Italian script with English translation and the list of English superimposed titles received by the Motion Pic-

ture Division in connection with application for license of the motion picture The Miracle, which picture was included in the motion picture entitled Ways of Love.

Hugh Flick, Director Motion Picture Division.

Sworn to before me this 26th day of February, 1951.

Agnes Wegener, Notary Public in the State of N. Y.

Qualified in Bronx County. No. 63-4186350. Cer-

tificates filed in New York, Bronx Co. Clk's & Reg.

Office. Commission Expires March 30, 1951.

IL MIRACOLO

REEL 1

Nannina:

Giuseppe e Santo Maria . . . Oh Gesu',
Giuseppe e Maria io lo sapevo che

saresti venuto, Dio quanto sei
bello! Mo perche' te ne vai? Non

te ne andare no! Ti posso parlare,
si! Dio che consolazione! Bello,

bello santo mio, bello! Che felicità
che gioia! Io lo sapevo che saresti

venuto sa! Gesu', Giuseppè, Maria,
bello santo mio, santo mio, io

sentivo sempre la tua voce, sempre e
se chiudevo gli occhi, ti vedevo

pure in una grande luce che mi sorridevi
a me, proprio a me, Ih, che ridere,

che ridere, che consolazione San

Giuseppe, mio santo, mio santo, mio
bello santo, mio devozione mia, tu sei

il piu' bello di tutti i santi, o sai
San Giuseppe mio . . . no, non te ne

andare, non te ne andare così' . . . e mo
che sei venuto non te ne devi andare

così'. Mi devi fare la grazia, mi de-
vi portare via, a te che ti ci vuole,
no! Tu mi fai morire e e' fatta. E

THE MIRACLE

REEL 1

Joseph and Mary . . . Oh, Jesus, Joseph and
Mary . . . I knew that you would come, Lord, how
handsome you are! Why are you leaving now!
Don't go, don't! May I speak to you? Yes!

Lord, what comfort! Handsome, handsome, Saint
of mine, handsome! What happiness, what joy!

I knew that you would come . . . one day, you
know! Jesus, Joseph and Mary, handsome Saint
of mine,

my Saint, I always heard your voice — always —
and when I closed my eyes I saw you in a

bright light and you smiled at me, at me alone.
What laughter, what laughter, what solace, St.

Joseph, my Saint, my Saint, my handsome Saint,
my devotion. You are the handsomest of all

saints, you know, my St. Joseph . . . No, don't
leave like this . . . now that you've come you
cannot leave me so . . . now that you've come you
cannot leave me so.

You must give me your grace, you must take
me away, it won't be difficult for you!

Just make me die and everything will be fine . . .
then take me to Heaven with you, before the

Lord. How lovely! What happiness! . . . What
. . . What joy, my St. Joseph, you are the kindest
of all saints I know, oh yes, for, for if

mi perti con te lassu', in paradiso
nella contemplazione del Signore. Che
bello! Che felicità! Che . . . che gioia,
San Giuseppe mio, tu sei il santo più

buono che io conosca, e sì, perché,
perché se no il Signore non ti
avrebbe affidato la Madonna con il
bambino. E allora fammi la grazia, me
ne hai già fatte tante, tutto m'hai
fatto dare, che gentilezza come ti

facevo una preghiera ti chiedivo qualche cosa,
subito me lo facevi dare. Questo è il vesti-
no che mi . . . che mi hanno regalato le monache
quello che t'ho chiesto ti ricordi? E mo mi
danno pure la minestra calda e m'hanno ac-
conciato pure per dormire.

Io non chiedo mai niente agli altri santi, no,
no, no, mai, tu però non mi fare scherzi, no,
io lo so come succede, che a un certo momento
tu sparisci e io resto qua' sola. San Giu-
seppe mio, San Giuseppe mio, bello, tu mi
devi portare, tu mi devi portare lassu' con
te nell'alta patria, che felicità, tanto qui
nessuno se ne accorge se io moro, le capre,
quelle sanno tornare pure da sole al paese . . .
San Giuseppe, bello santo mio, bello, e il

Giglio dov'è? Che bello che sei, tu quanto
sei bello, che ci sto a fare io qua? Una

you weren't so the Lord would not have
entrusted you with the Madonna and her Child.

Well then, give me this grace . . . you have
given me so many . . . you have seen to it that

I receive everything . . . What kindness . . .

just as soon as I prayed for something . . . asked
for something, you saw to it that it was
granted me. This is the dress that . . . that
the nuns gave me, do you remember?

And now they give me warm soup too, and they
have set up a place for me to sleep.

I never ask anything of the other saints, no,
no, no, but don't you play any tricks on

me, no, I know what happens, suddenly, you
disappear and I'm left all alone. My

St. Joseph, my handsome St. Joseph . . . You
must take me, you must take me up there with

you. What happiness! No one here would know
if I were to die . . . the goats, they can go

back to the village alone . . . St. Joseph,
handsome Saint, my handsome one, where is the

Lily? How handsome you are, how very hand-
some. What am I doing here? When I told them
down.

volta che ho detto laggiu' che mi avevi
parlató non sai quello che mi hanno combinato,

Cosimino mi ha fatto diventare matta a me!
Mi suonava la tromba dentro la recchia e mi
diceva oe'! Questa e' la tromba dell'arc-
angelo Gabriele, eh! Che m'hanno combinato

Ma quelli non capiscano niente, no! Non
sono degni, ed intanto qua' stai tu e quassu'

sta San Giuseppe, quassu' da me e' venuto
sco da me, e' venuto? Tu sei passato per il
passe, e'! E non t'hanno visto? E' certo
non sono degni, non sono degni, invece, io!

Quanto sei bello! Sai che mi dicono sempre?
I matti non possono entrare in paradiso!

A me?! Oh! Ma non e' vero! Non e' vero
questo, no! Sai che sono le tentazioni, tu?

Figurati che una volta io sentivo sempre una
voce, una voce dolce, dolce, come pare che
fosse la tua che mi dicevi sempre, buttati,
buttati cretina, buttati e vola, ma io, io,

io, arrivavo sempre fino qua', vedi, qua',
qua', fino qua', poi mi mancava il coraggio,

poi mi pentivo e dicevo sempre dimani, dimani,
quando suonano le campane se San Giuseppe

insiste ancora, io mi butto. Ma poi ho
capito, ho capito perche' non eri tu, no,

sai chi era? Era il diavolo. Ah! Quello
voleva che mi ammazzassi cosi' io mi dannavo

there once that you had spoken to me, you can't
imagine what they did to me. Cosimino drove

me mad! He blew his trumpet in my ear and he
cried: "Oe", this is the Archangel Gabriel's
trumpet, eh!" The things they did to me!
But they don't understand a thing, no!

They're not worthy, and anyway, here you are.
St. Joseph is up here . . . he has come up here to
see me . . .

to see me alone. You passed through the
village, eh? Didn't they see you? But, of
course, they're not worthy, they're not worthy
. . . as for me! . . .

How handsome you are! Do you know what they
say to me? Mad people can't go to Heaven!

For me? Oh! But that's not so! That's not so.
is it? Do you know what temptations are? Just

think . . . at one time I continuously heard a voice,
a sweet, sweet voice, one like yours . . . and it
said to me, jump, jump, you fool, jump and fly,
but I, I, I . . . I always got to this point, this

one see, here, here, up to this point, then I
lacked the courage; then I repented and said,

tomorrow, tomorrow, when the bells toll, if
St. Joseph insists, I'll jump. But then.

I understood, I understood why it was not you,
no; do you know who it was? It was the devil;

Ah! He wanted me to kill myself so that I
would be damned forever and never get to

e non potevo piu' andare in paradiso. Ma t'ie', so stata brava? Ma mo' ... ma mo'!

Tu sai che faccio un'altra cosa, io guarda ... tu ti metti ... tu ti metti fermo nell'aria lassu' ... guarda ... lassu' ... e ... e mi chiami e io ti vengo incontro ... e se mi prende la

paura e affondo nell'aria tu mi dai una mano e mi tirì su ... un po' alla volta.

Vedrai che imparo ... come, imparo come po' ... e poi andiamo lassu' ... guarda lassu' ... lassu' c'è il Santuario di San Michele, lo sai ...

e già io a te lo dico ... tu sai tutto ... saliamo in cima al campanile ... la si vede

tutte le montagne, tutta le case, tutti ... il mare si vede ... e allora tu mi prendi

per mano ... pure San Michele mi può aiutare ... no? E tutte e tre usciamo dal campanile così ... e voliamo ... voliamo sulla valle di fuoco ... voliamo sul mare ... e poi scendiamo

a toccare l'acqua con la punta dei piedi ... e poi torniamo su ... su ... San Giuseppe bello,

famme morì ... famme ... e se Gesu' ... se Gesu' tornasse in terra pure qua' mi piacerebbe di

stare ... ma non torna quello. Vedi, tu sei un santo importante ... ma non sei Gesu',

quella faceva guarire i malati cacciava il demonio, qua' il demonio sta dappertutto ...

Heaven. But, I've been good. But now ... but now!

I'm going to do something else, look ... you ... you get ... you get up in the air, up there ...

look ... up there ... and ... and you call me and I'll meet you ... and if I become frightened

and sink in the air, you give me your hand and pull me up ... a bit at a time. You'll

see ... I'll learn ... of course I'll learn ... and then we'll go up ... look up there ... up there is St. Michele's Sanctuary you know ... but why do I tell

you this? You know everything. Let's climb to the top of the bell tower ... from there one sees all the mountains ... all the houses, all the sea ... and then you take me by the hand ... St. Michele

can help me too ... no? And the three of us will leave this bell tower so ... and we'll fly ...

we'll fly to the Filar Valley ... fly over the sea ...

and then we'll come down and touch the water with our toes ... and then we'll go up again ... up ...

beautiful St. Joseph, make me die ... make me ... and if Jesus were to return to the

earth I'd like to stay here ... but He will not return, see, you're an important Saint ... but

you are not Jesus, he cured the sick, cast aside the demons ... here we have demons on

tutti sono malati e ... se lui ritornasse,
oppure facesse finire il mondo subito tanto ...
i segni divini questi e' ? ... E gia' ... Non sei
capace tu ... sei capace tu ? ... No ... e'
facile ...

E' bello ... senti ... no ... ah ... che paradiso
... che paradiso ... o ... so tutta sudata
... qua ... so

tutta sudata ... anche le gambe ... e' ... grazia
... a ... io non ti vedo quasi piu' ... e' e' fuco
interno ... lo vedi come sei ... io lo so ... qui
sempre piu' luce sempre piu' luce e poi

sparisci ... e perche' te ne voi andare, io non
voglio stare qua ... e ... e ... sai quando ero
piu' giovane, Cosimino lo scemo mi voleva
sposare ... che scemo ... e se io adesso c'avevo
i figlio non potevo venire con te ... portami
via ... non me lascia' qua' ... non me lascia'
qua' ... che paradiso ... che paradiso ...
dammi da bere ... dammi da bere ...

San Giuseppe mio ... San Giuseppe mio ... e
preso un pane lo spezzo' ... e un'Angelo del
Signore

le apparve in sogno e gli disse ... Giuseppe
figlio di Davide non temere di prendere Maria
in sposa ... perche' cio' che in essa e' stato
concepito ... a ... San Giuseppe ... mio ...
buttami

via il corpo e prenditi l'anima ... starei
bene senza niente addosso ... qua ... San

all sides ... everyone is ill and ... if He were
to return, or if He were to bring about the
end of the world ... for divine sign, these,
eh ? ... Ah yes ... you're not capable ...

are you ? ... No ? ... It's easy ... It's beautiful
... Listen ... no ... ah ... what heaven ... what

heaven ... o ... I'm so perspired ... here ... I'm
so perspired ... my legs too ... it's ... grace ...
ah ... I almost don't see you any longer ...
there's smoke all around ... see what you do ...
I know

that ... here, ever more light, ever more light
and then you disappear ... why do you want to
leave ? I don't want to remain here ... and ...
and ... do you know, when I was younger,

Cosimino, the fool, wanted to marry me ...
what a fool ... and if I had children now, I

would not be able to come with you ... take me
away ... don't leave me here, ... don't leave me
here ... what heaven ... what heaven ... give me
something to drink ... I'm not well ... give me

something to drink, I'm not well ... My St.
Joseph ... My St. Joseph ... and taking a loaf of
bread he broke it ... and an Angel of the Lord
appeared to him in a dream and said ... Joseph,
son of David, have no fear to take Mary as
your bride ... for what is being conceived
in here ... a ... St. Joseph ... my ... cast aside
my body and take my soul ... I would feel so
happy without this weight ...

Giuseppe ... San Giuseppe e' venuto a visitarmi, che paradiso, che paradiso interra ... a matta ha ricevuto la grazia ... io sto male ... sto male ... Iamme ... Iamme.

IL MIRACOLO

REEL 2

Nannina:
Bongiorne, fra Raffaello.

Fra Raff:
Bongiorno.

Nannina:
Ditemi na cosa, i santi possono apparire si?

Fra Raff:
Sì, io i vego sempre i santi.

Nannina:
Voi?

Fra Raff:
Sempre a Madonna.

Nannina:
Voi.

Fra Raff:
Spesso e volentieri.

Nannina:
Ma come? Si possono vedere son questi occhi?

Fra Raff:
Ochio.

Nannina:
Ah! E chi avete visto?

here ... St. Joseph ... St. Joseph has come to visit me, what heaven, what heaven on earth ... the mad woman has received a grace ... I'm ill, ... I'm ill ... Oh ... Oh ...

THE MIRACLE

REEL 2

Good day, Fra Raffaello.

Good day.

Tell me something, saints can appear, can they not?

Yes, I always see saints.

You?

Always ... the Madonna.

You.

Often, and gladly

How? Can they be seen with these eyes?

Even with one!

Ah! And whom have you seen?

Fra Raff:
A Madonna.

Nannina:
A vedete sempre?

Fra Raff:
Sempre, tutti i giorni.

Nannina:
Gesù! E. e' bella?

Fra Raff:
Bellissima.

Nannina:
E, o sapete! Io ho visto San Giuseppe proprio mo, a capo d'orso laggia', e gli ho parlato pure, tanto, come ere bella, Fra Raffae', io o' voglio rivedere.

Fra Raff:
Quello mo sape a strade e torna.

Nannina:
Voi dite.

Fra Raff:
Quando e Signore vuole!

Frate:
Ehi, e'e'?

Nannina:
Ma come sarebbe a dire, on sapete che e' successo un miracolo?

Frate:
Ma che miracolo?

The Madonna.

Do you always see her?

Always, every day.

Lord! And is she lovely?

Very lovely.

Say, you know! I saw St. Joseph, just now, at Capo d'Orso, up there, and I spoke to him

too, for a long time, he was so handsome. Fra Raffae', I'd like to see him again.

He knows the way now and he'll come back.

Do you mean it?

When the Lord wishes!

Say, what is it?

What do you mean? Don't you know of the miracle?

But what miracle?

Nannina:

Gesu', ma voi non avete avuto ma apparizioni?

Frate:

So vent'anni che faccio il frate, non ho mai visto no miracolo.

Nannina:

Uh! Fra Raffaello che dici?

Fra Raff:

Chillo e' nu materiale.

Nannina:

Lui ha avuta l'apparizione.

Cosimino:

Ta si fragata a mela ... damme a mela, dammela la mela e' la tea e' la mea,

Vattene.

CANZONE E PIANTO BAMBINO

Donna (Women:)

Nanni'---

Nanni':

E si', pronti ... tutti e due si si belli e Nanni', belli e Nanni,

Woman:

Gesu', e' incinta. Nanni' lo sai che sei incinta.

Nanni:

E non mi toccate, non mi toccate, e' la grazia del Signore.

Women:

Si ... a ... grazia ...

Lord, haven't you ever had apparitions?

I have been a monk for twenty years and I have never seen a miracle.

Oh! Fra Raffaello, what is he saying?

He is a materialist.

He has had an apparition

You've stolen the apple ... give me the apple, give me the apple, it's yours and mine,

go away

SONGS AND CHILDREN'S CRIES.

Nanni:

Yes, ready ... both of them so lovely, and Nanni', lovely and Nanni'.

Lord, she's pregnant. Nanni', do you know that you're pregnant?

Don't touch me, don't touch me, it's the grace of God.

Yes ... a ... grace ...

Nanni':
A me! A me! A me!

REEL 3

Cosimino:
Via, via fetente, via, via.

Nanni':
Cosimino, lascia sta a roba mia, er
dimonio t'ha preso, cattivo, cattivo,
pure a preghiera t'ho detto: va via, via.

Andrea:
Era in posto mio cattivo.

Monk:
Nena, mena.

Cosimino:
Va via, fetente.

Woman:
Oh, Nanni, vieni qua'

Nannina:
A me!

Woman:
Nanni, vieni, e qua ~~nessuno~~ mangia, non
aver paura.

Nanni:
A me!

Woman:
Si' si vieni un po' qua', tienimi questo.

Nanni:
Subito signora,

To me! To me! To me!

REEL 3

Away, away you vile one, away, away.

Cosimino, leave my things alone, the
devil has taken you, you bad one,
bad one
go away, away.

He was in my place, bad one.

Go away, vile one

Say, Nanni, come here

Who, me?

Nanni, come here, no one bites here,
you needn't fear.

Who, me?

Yes, yes, come here a moment, hold
this for me

Yes, of course, Signora.

Woman:

Felice e' andato a Maiore e ancora non torna, quello quando va via sparisce,

si perde per la strada, appena finito me vai a prendere un poco d'acqua?

Nanni:

Signo', non posso fatiga'.

Woman:

Io ti regalo.

Nanni:

Si, lo so, ma non posso.

Woman:

Cosa ti vuole per una brocca d'acqua, domattina me lo fai un bucat' o?

Nanni:

Signo', grazie tanto, ma non posso lavora'.

Woman:

E perche'?

Nanni:

E'!

Woman:

Eh! Fesserie, io due ore prima di sgravare, e ho avuto due gemelli, ho lavorato.

Nanni:

Si', lo so.

Felice has gone to Maior and he hasn't returned ... when he goes away he seems to disappear,

He gets lost on the way. When we're through with this would you get me some water?

Signo', I can't work.

I'll give you something.

Yes, I know that, but I can't.

You need no strength for a pitcher of water, will you do my wash tomorrow?

Signo', thank you so much, but I can't work.

And why not?

It's!

Oh, that's all nonsense, I worked up until two hours before I gave birth, and I had twins.

Yes, I know.

Woman:

Tu devi mettere giudizio, pensi che devi avere un bambino, adesso qualche cosa te

la devi mettere da parte.

Nanni:

Signo', questo non ha bisogno di niente, io non posso fatica' ... pure se io mi more

di fame non fa niente, ma questo rispetto lo devo avere.

Second Woman:

Oe' Nanni! Nanni', vieni a ca', Nanni'.

Nanni:

E!

Second Woman:

Nanni', vieni a ca'.

Nanni:

Subito, scusate e'.

First Woman:

Prego.

Nanni:

A me?

Second Woman:

Nanni, oh!

Nanni:

Scusate, signora'.

First Woman:

Fai, fai ...

You must be sensible, you must remember that you will soon have a child, you will have to

save.

Signo', this child will have need of nothing, I can't work ... even if I were to die of

hunger, it doesn't matter ... But I must have this respect for the child.

Say, Nanni! Nanni', come here, Nanni'.

Yes!

Nanni', come here.

Coming, excuse me.

Go right ahead.

You're calling me?

Say, Nanni!

Excuse me, Signore.

Go right ahead, please ...

Second Woman:

Nanni', ti sei degnata scendere fra
noi poveri mortali, quale onore ci fai?

Nanni:

A me?

Second Woman:

Si', a te ... tu eri sparita, pensavamo
che ci avessi schifato, Nanni'.

VOCIO RAGAZZI

Young Man:

Perche' non vi degnate?

Nanni:

Piange mo, perche' piage?

Voices:

E' l'emozione, e' l'emozione, tu sei
stata toccata dal signore, vieni, vieni

Con noi.

Girl:

Tu non sai quello che si crede di essere.

First Woman:

Voi non dovete sfotterla.

Boy:

Quella e' diventata ancora piu' seema.

First Woman:

Povera donna, lasoiatela stare.

Boy:

Si', altro che povera donna.

Nanni', you have deigned to come down
among the mortal one, what a great honor
you do us!

Do you mean me?

Yes, you ... we thought you had disappeared,
we thought you shunned us all, Nanni'.

VOICES CHILDREN

Why didn't you deign to stay with us?

She's crying now, why is she crying?

She's overcome, she's overcome with
emotion, you've been touched by the Lord,
come, come
with us.

You don't know who she thinks she is."

You mustn't make fun of her.

She's become ven a greater fool.

Poor woman, let her be.

You said it, she's an unfortunate
woman.

Voices:

Lina Tonino venite.

Fourth Woman:

E allora!

Nanni:

Sempre davanti alla casa del Signore, io ...
sempre davanti alla casa dei Signore ...

perche' io avevo paura di venire fra
voi ... avevo paura che mi pigliavate per
matta!

Voices:

No, ma che dici ... no.

Boy:

Così e così ti sta bene ... sì così.

Fifth Woman:

Nanni', Nanni', ma capisci ti fanno
onore.

Nannina:

Cosimello m'ha cacciata, lo sapete? ...
Ma questa e' la volonta' del Signore,

fra voi covevo venire.

Voices:

Nanni.

Nanni:

E!

Voices:

Nanni', vedi che ti buttano, Nanni oh,
e vedi!

Lina Tonino, come.

And then?

I was always in front of the house of
the Lord ... always in front of the
house of the Lord because I was afraid
to come down here with you ... I was
afraid that you would call me mad!

No, what are you saying ... no.

So, so, it looks well on you.

Nanni', Nanni', do you understand
that they're honoring you.

Cosimello threw me out, do you know
it? ... But so is the will of the Lord,
he wanted me
here among you.

Nanni'.

Yes?

Nanni'

Nanni':

A me? Questo?

Voices:

Nanni', Nanni', Nanni', sì a te a te.

Nanni':

A me, grazie e grazie.

Chorus:

Evviva Maria, Maria, evviva

Evviva Maria, e chi la creò.

Girls:

Nanni', ti sta bene e'?

Nanni':

Ma no, no che fate?

Voices:

Oh, Oh, Oh ...

REEL 4

Nanni':

Mio Dio, perdona loro, non sanno quello
che fanno. No! Bastadi, no, cose'

no, no.

Che cattivi, figliolo benedetto, stia
tranquillo la difendo io—Dio mio.

Oh, figlio santo, figliolo santo—
figlio santo, io non sono degna, sono
troppo

una povera cosa, mio Dio, aiutami tu,
Sia fatta la volontà tua.

Chorus:

Evviva Maria.

To me? This?

Nanni', Nanni', Nanni', yes, to you, to you.

To me? Thank you, thank you.

Hurray Maria, Maria, Hurray.
Hurray Maria, and Who made her.

Nanni, it fits you well, doesn't it?

No, no, what are you doing?

Oh, oh, oh ...

REEL 4

My God, No! No! Naughty ones!

How naughty, my blessed son, never
fear, I'll defend you—

Oh, blessed son, oh blessed son—
blessed son, I'm not worthy, I am but
a small creature, my God,

You help me, and may your will be done!

Hurray Maria.

Nanni':

Oh! O Dio. Oh, oh, oh, oh, uh! Uh!
Uh! Aiuto! Ahoh, Dio ohah, Dio,
Dio, Dio—Oh! oh! Dio-Dio aiutami,
Dio aiutami—(lamenti) Oh!

Figlio mio, figlio mio, creatura mia,
creatura mia, sangue

mio, mio, mio, mio, mio, figlio mio.

Santo mio!

Oh, Oh God! Oh, oh, oh, uh! uh!
Uh! Help! Help! Ahoh, God ohah,
Oh God

God, God—Oh! Oh! God—God help me,
God help me—(laments) Oh!

My son, my son, my son, my son, my
flesh, mine, mine, mine, my son.

My Saint!

[fol. 117] III.

Anna Magnani

in

Roberto Rossellini's

The Miracle

from the story by Federico Fellini

(then dissolve into l.s. dictionary)

Dissolve to close-up through slot

(b) . . . ardent affection, passionate attachment,
men's adoration of God, sexual passion, gratification,
devotion . . .

(then fade out & fade in to picture)

The Miracle

Final English Title List

1. St. Joseph!
2. Omit.
3. I knew you'd come . . .
4. How beautiful you are!
5. Are you leaving? . . . Don't go!
6. May I talk to you?
- [fol. 118] 7. Lord, what consolation!
8. Handsome, handsome Saint of mine!
9. I knew you'd come . . .
10. Jesus, Joseph, Mary . . . Handsome Saint of mine
11. I always heard your voice . . .
12. And when I closed my eyes, I saw you . . .
- 12a. . . . in bright light . . . smiling at me . . .
13. What laughter! . . . What joy!

14. Omit.
15. You are the handsomest of all Saints, you know.
16. Omit.
17. Don't go . . . Now that you've come, you can't leave me . . .
18. Bestow your grace upon me.
19. You must take me away . . .
20. Omit.
21. Just make me die, that's all.
22. Then take me to Heaven with you . . .
23. . . . in the contemplation of the Lord.
24. Omit.
25. My Saint Joseph . . . You're the best Saint I know.
26. If it weren't so, the Lord wouldn't have entrusted you . . .
- [fol. 119] 27. . . . with the Madonna and her Child.
28. Give me your grace . . .
29. You've always looked after me . . .
30. And with so much kindness . . .
31. Omit.
32. This is the dress ~~the~~ nuns gave me . . . Remember?
33. And they give me warm soup . . . And a place to sleep.
34. I never ask anything of the other Saints . . .
35. But don't play tricks on me . . .
36. You disappear suddenly . . .
37. . . . and I'm left all alone.
38. My handsome Saint Joseph . . .
39. You must take me up there with you . . .
40. . . . to the other world . . .
41. Make me die now . . .
42. No one would know . . .
43. The goats will find their way to the village by themselves.
44. Saint Joseph . . . my handsome Saint . . .
45. Where's the lily?
46. 47. Omit.
48. When I told them that you spoke to me . . .
49. . . . they drove me mad.
- [fol. 120] 50. Cosimino blew his horn in my ear, shouting . . .

50a. "O, this is Gabriel's trumpet!"

51. The things they did to me!

52. But they don't understand . . . They're not worthy

53. Anyway, you *are* here.

54. Saint Joseph is here . . . He has come to see me
me alone . . .

55. You passed through the village . . .

56. . . . but they didn't see you . . .

56a. . . . They're not worthy.

57. 58. Omit.

59. Do you know what they said to me?

59a. "Crazy people can't go to Heaven."

60. Omit.

61. But that isn't true, is it?

62. Do you know about temptations?

63. Once, I heard a voice . . . a sweet voice . . . like
yours . . .

64. And the voice said, "Jump, you fool! . . . Jump and
fly!"

65. I'd always get to this point . . . here . . .

66. . . . and then my courage would fail me . . .

67. And I'd repent and say . . .

67a. "Tomorrow, when the bells toll . . ."

[fol. 124] 68. "Tomorrow, if Saint Joseph insists, I'll
jump."

69. Then I knew the voice wasn't yours.

70. It was the voice of the devil.

71. He wanted me to kill myself so I'd be damned for-
ever . . .

71a. . . . and never get to Heaven.

72. But I've been good.

73. I'm going to do something else.

74. You get up in the air . . . up there . . .

75. Call me . . . I'll follow you . . .

76. And if I get frightened and start falling . . .

76a. . . . your hand will pull me up . . .

77. . . . a little at a time . . . I'll learn how to
fly . . .

78. And we'll go up . . . Look . . . up there . . .

79. San Michele's Sanctuary . . . you know . . .

80. Omit.

81. Let's climb to the top of the bell tower

81a. . . . where one sees all the mountains, all the sea

82. . . . you'll take me by the hand San Michele will help, too

83. And the three of us will leave And we'll fly

[fol. 122] 84. We'll fly over the Fury Valley over the sea

85. And then we'll come down and touch the water with our toes

86. And then we'll go up again

87. Beautiful Saint Joseph make me die

88. If Jesus were to return to this earth

89. . . . I'd like to stay here.

90. But he will not return.

91. You are an important Saint but you are not Jesus.

92. He cured the sick cast aside the demons

93. Here there are demons on all sides.

94. Everyone is ill

95. If He were to return

96. . . . or bring about the end of the world

97. . . . those would be signs of divinity.

98. Can you do this?

99. Omit.

100 to 102. Omit.

103. I'm so perspired

104. And my legs

105. I can hardly see you

106. There's a fire within me

[fol. 123] 107. Omit.

108. And a great light Lots of light

109. . . . and then you disappear

110. Why do you want to leave?

111. I don't want to remain here.

112. You know, when I was younger

113. . . . crazy Cosimino wanted to marry me

114. What a fool!

115. If I had children, I couldn't go with you now.

116. Take me away . . . Don't leave me here . . .

117. Don't leave me here . . .

117a. Give me something to drink . . .

118, 119. Omit.

120a. I'm not well . . .

120. "And taking a loaf of bread, He broke it . . ."

121. "And an Angel of the Lord appeared in his dream

and said . . ."

122. "Joseph . . . Son of David . . ."

123. "Have no fear to take Mary as your bride . . ."

124. ". . . for what has been conceived here . . ."

125. Saint Joseph . . .

[fol. 124] 126. Cast aside my body and my soul . . .

127. I'd feel so happy without this weight.

128. Omit.

129. Saint Joseph has come to me . . .

130. What Heaven . . .

131. Heaven on earth . . .

132. The mad woman has received grace . . .

133. Omit.

End of Reel 1.

The Miracle, Reel 2

134. Omit.

135. Tell me . . . Saints do appear, don't they?

136. Yes, I always see Saints.

137. Also the Madonna.

138. Often and at will.

139. Can they be seen with these eyes?

140. Even with one eye.

141, 142. Omit.

143. You see the Madonna?

144. Yes . . . Every day.

145. And is she beautiful?

146. Most beautiful.

[fol. 125] 147. You know, I saw Saint Joseph, up there at Cape d'Orso . . .

148. I spoke to him, too for a long time . . .

149. Omit.

150. He was so handsome . . . I'd like to see him again . . .

151. Now that he knows the way, he'll come back.

152. Omit.
 153. If the Lord wills it!
 154. Haven't you heard about the miracle?
 155. What miracle?
 156. Haven't you ever seen an apparition?
 157. I'm a monk 20 years and I've never seen a miracle.
 158. What is he saying?
 159. He's a materialist.
 160. Omit.
 161. I stole the apple!
 162. Give it to me . . . Half is mine . . .
 163. Omit.
 164. Lord, she's pregnant!
 165. Nanni, do you know you're pregnant?
 166. Omit.
 167. Don't touch me!
 [fol. 126] 168. It's the grace of God!
 169. Omit.

End of Reel 2.

The Miracle, Reel 3

188. Cosimino, leave my things alone!
 188a. The devil got into you . . . you're evil!
 189. Nanni, come here!
 190. Omit.
 191. Don't be afraid, no one will bite you.
 192, 193. Omit.
 194. Felice has gone to Maiora.
 195. Every time he goes, he disappears.
 196. Later, will you get me some water?
 197. I can't work, Signora.
 198. I'll give you something.
 199, 200. Omit.
 201. Will you do my wash tomorrow?
 202. Thank you but I can't work.
 203. Why not?
 203a, 204. Omit.
 205. I worked until two hours before I gave birth . . .
 206. And I had twins!
 207. You must be sensible.
 [fol. 127] 208. Remember, soon you'll have a child.

209. You ought to put something aside.
 210. This child will have need of nothing.
 211. I mustn't work . . .
 212. . . . even if I were to die of hunger . . .
 213. I must respect the child.
 214, 215, 216. Omit.
 217. What honor! You've descended among us mortals!
 218, 219. Omit.
 220. We thought you disappeared . . . We thought
 you shunned us.
 221. Why didn't you stay among us?
 222. She's crying now . . . Why?
 223. She's overcome with emotion . . .
 224. Omit.
 225. Do you know whom she thinks she is?
 226. Don't make fun of her.
 227. She's out of her mind.
 228. Poor woman . . .
 229. Yes, an unfortunate woman.
 230, 231, 232. Omit.
 233. I was afraid to come down here . . .
 234. I was afraid you'd call me crazy!
 235. It looks well on you . . .
 [fol. 128] 236. Nanni, they're paying homage to you!
 237. Cosimino threw me out . . .
 238. But it is the will of the Lord that I be here, among
 you.
 239. To me! . . . This?
 239a. Yes, to you.
 240. To me! . . . Thank you . . .
 241. Omit.
 241a. It fits you well.
 241b. Omit.

End Reel 3.

The Miracle, Reel 4

242. How bad they are!
 243. My blessed son, Don't fear . . . I'll defend you!
 244. My Lord!
 245. Blessed son! . . . my blessed son . . .
 246. My holy son . . .

247. I'm not worthy
 248. I'm but a small creature
 249. My Lord You help me
 250. And may Your will be done

251, 251a. Omit.

[fol. 129] 252. Help!

253, 254, 255. Omit.

256, 257, 258, 259. Omit.

260. My son!

261. My love!

262. My flesh!

The End.

[fols. 130-132] IN SUPREME COURT OF NEW YORK

[Title omitted]

STIPULATION

The parties hereto stipulate that hundreds of letters, telegrams, post cards, affidavits and other communications were received by the Board of Regents prior to its determination in this matter. These communications were on both sides of the question. It has been felt that no useful purpose would be served by including them in the return, but they are available and the Court may consider them if it so desires.

O'Connor and Farber, Attorneys for Petitioner;
 Charles A. Brind, Jr., Attorney for Respondents.

[fol. 133] IN SUPREME COURT OF NEW YORK, COUNTY OF
 ALBANY

[Title omitted]

NOTICE OF APPEAL TO COURT OF APPEALS—May 21, 1951

SIRS:

Please take notice that, pursuant to leave granted by an order of the Appellate Division of the Supreme Court, Third Judicial Department, in the above entitled action,

dated and entered on the 18th day of May, 1951, in the office of the Clerk of the Appellate Division of the Supreme Court, Third Judicial Department, the petitioner above named hereby appeals to the Court of Appeals of the State [fols. 134-136] of New York, from the final order of the Appellate Division, Third Judicial Department, entered in the office of the Clerk thereof on the 15th day of May, 1951, unanimously confirming the determination of the Board of Regents of the University of the State of New York, which order rescinded licenses for the public exhibition of the motion picture film entitled "The Miracle," and petitioner appeals from each and every part of said order of confirmation, as well as from the whole thereof.

Dated, New York, May 21, 1951.

Yours, etc., Ephraim S. London, Attorney for Petitioner-Appellant, Office & P. O. Address, 150 Broadway, Borough of Manhattan, New York 38, N. Y.

To: Clerk of the Appellate Division, Third Judicial Department, and Charles A. Brind, Jr., Esq., Attorney for Respondents, State Education Building, Albany, N. Y.

[fol. 137] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION—THIRD DEPARTMENT

[Title omitted]

ORDER APPEALED FROM

[fol. 138] The above entitled proceeding having been duly brought to argument at the above captioned term and having been argued by O'Connor & Farber, Samuel E. Aronowitz, Esqs., attorneys for petitioner, and Charles A. Brind, Jr., Esq., attorney for respondents, and due deliberation having been had and a decision thereon having been handed down on the 9th day of May, 1951, it is

Ordered that the determination of the respondents be, and the same hereby is, unanimously confirmed with Fifty (\$50.00) Dollars costs and disbursements.

John S. Herrick, Clerk.

A true copy. John S. Herrick, Clerk.

Ent. 5-15-51.

[fol. 139] IN SUPREME COURT OF NEW YORK, APPELLATE
DIVISION

OPINION OF APPELLATE DIVISION

FOSTER, P. J.:

This is a proceeding under Article 78 of the Civil Practice Act to review a determination of the Board of Regents of the University of the State of New York which rescinded licenses for the public exhibition of a motion picture film, entitled "The Miracle," on the ground it is sacrilegious.

The picture, produced in Italy, depicts a demented peasant girl tending a herd of goats on mountainside. A bearded stranger appears, garbed in a dress reminiscent of Biblical times. She imagines him to be St. Joseph, and that he has come to take her to heaven. While she babbles about this he says nothing, but plies her with wine, and the implication is left that he seduces her. Later, when her pregnancy becomes known to the villagers, they mock her and place a basin on her head in imitation of a halo. She exclaims at one point as to her pregnancy, "It's the grace of God." She leaves the village to take refuge in a cave, and finally gives birth to a child in the basement of a church which stands on a high hill.

According to the English dialogue, in her babbling to the bearded stranger, she makes these statements: "I'm not well * * * And taking a loaf of bread, he broke it * * * And an Angel of the Lord appeared in his dream and said * * * Joseph, * * * Son of David * * * Have no fear to take Mary as your bride * * * for what has been conceived here * * * St. Joseph * * * Cast aside my body and my soul * * * I'd feel so happy without this weight * * * St. Joseph has come to me * * * What Heaven * * * Heaven [fol. 140] on earth * * * The mad woman has received grace."

On March 2, 1949, the motion picture division of the State Education Department issued a license for the picture with Italian dialogue. Apparently it was never shown pursuant to this license. On November 30, 1950, it was again licensed as a part of a trilogy entitled "Ways of Love," with an English dialogue. After it had been pub-

liely shown under this license the Board of Regents received many protests against its exhibition on the point that it was sacrilegious. A committee of the Regents was requested to view the picture, and after it had reported there was a basis for the claim that the picture was sacrilegious the Commission of Education issued an order requiring the licensees of the film to show cause at a hearing before the same committee why the licenses should not be revoked.

At the hearing before the committee, petitioner, who was the holder of the license last issued, appeared specially and challenged the Regent's authority to proceed in the matter on the theory that it had no power of review under the statute as to a license once issued. The committee reported that in its opinion the Regents had authority to consider whether the film was licensed illegally or not, and recommended that the Board of Regents, as a committee of the whole, view the picture. This action was taken, and after due consideration the Board found the picture to be sacrilegious, and voted to rescind the licenses therefor on February 16, 1951.

Overshadowing all other arguments petitioner contends on this review that censorship of sound motion pictures [fol. 141] is unconstitutional as a previous restraint on freedom of speech and freedom of the press, in violation of the First and Fourteenth Amendments to the Constitution of the United States and to Section 8 of Article 1 of the Constitution of the state. We do not regard such an issue as an open one in this court. Motion pictures have been judicially declared to be entertainment spectacles, and not a part of the press or organs of public opinion; and hence subject to state censorship (*Mutual Film Corporation v. Ohio Indemnity Co.*, 236 U. S. 230). This Court has upheld the power of the state to censor motion pictures (*Pathe Exchange, Inc., v. Cobb*, 202 App. Div. 450), a decision which was affirmed by the Court of Appeals (236 N. Y. 539). Strong criticism has been voiced against the distinctions made between movie films and freedom of expression otherwise guaranteed (*Cornell Law Quarterly*, Vol. 36, No. 2, p. 273); and some dicta would seem to indicate a change of viewpoint (*United States v. Paramount Pictures*,

331 U. S. 136, 166). But despite the enlarged scope of motion pictures as a medium of expression in recent years, and the addition of sound dialogue, the latest authoritative judicial expression which bears directly on the subject still recognizes the distinction (*Rd-Dr Corporation, et al., v. Smith*, 183 Fed. Reporter [2nd series] 562; certiorari denied 340 U. S. 853). In view of this situation it is not appropriate for us, as an intermediate court, to re-examine the issue.

In addition to arguing against the principle of censorship generally, petitioner also argues that Section 122 of the Education Law, which bars the licensing of a motion picture deemed sacrilegious, is an unconstitutional exercise of legislative power. This argument proceeds on the theory that no thing can be deemed sacrilegious as applied to a motion picture without impinging on the constitutional guaranty of freedom of religion. Petitioner cites the fact that what may be sacrilegious to one group of citizens may not be so as to other groups; and hence it reasons that no enforceable meaning can be given to the term for the purpose of censorship. The Board of Regents based its revocation solely on the ground that the picture is sacrilegious; that it parodies in effect the Immaculate Conception and the Divine Birth of Christ as set forth in the New Testament. By millions of Christians these doctrines are held sacred, and any profanation thereof regarded as a sacrilege. Concededly there are other groups who do not accept these beliefs. May the state bar on the ground of sacrilege a motion picture that profanes the religious beliefs of one group, however large, when the profanation is not common and universal to all groups? Assuming the validity of the distinction we have already noted between motion pictures and other organs of expression we think the answer to this question lies in the affirmative.

The term "sacrilege," according to modern semantics, means the violation or profanation of sacred things. It is derived from the Latin word "sacrilegium," which originally meant merely the theft of sacred things; but its meaning has since been widely extended. Even as far back as Cicero's time it had grown in popular speech to include

any insult or injury to things deemed sacred, Encyclopaedia [fol. 143] Britannica, Vol. 19, p. 803). Obviously the legislature used the term in its widest sense, and we think it was intended to apply to all recognized religions; not merely to one sect alone. Any construction which denoted a preference for one sect would be inconsistent with the constitutional mandate of complete separation between church and state. Support for this view may be found in another field. For instance, it is a criminal offense in this state to present an exhibition in which there shall be a living character representing the deity of any known religion (Penal Law, Section 2074). In a sense this statute also impinges on freedom of expression so far as religion is concerned, yet no one, that we can discover, has challenged the power of the state in the interests of public peace and order to enforce it. We think the state has the same power for the same reason to exercise a previous restraint as to motion pictures that may fairly be deemed sacrilegious to the adherents of any religious group. The exercise of such a power is directly related to public peace and order, and unless clearly in conflict with a constitutional prohibition it should not be denied.

We fail to see how such restraint can be construed as denying freedom of religion to anyone, or how it raises the dogma of any one group to a legal imperative above other groups. As we construe the statute all faiths are entitled to the same protection against sacrilege. This is not to say that full inquiry and free discussion, even to the point of attack, may not be had with regard to the doctrines of any religion, including Christianity, by those [fol. 144] who are freethinkers and otherwise (*Commonwealth v. Kneeland*, 20 Pick. 206; *Cantwell v. Connecticut*, 310 U. S. 296). However, motion pictures, staged for entertainment purposes alone, are not within the category of inquiry and discussion. A view of the picture in question would convince any reasonable mind that it was conceived and produced purely as an entertainment spectacle, and not as a vehicle for inquiry or discussion as to the merits of any religious dogma. The statute does not muzzle either free speech or a free press. All it purports to do is to bar a visual caricature of religious beliefs held

sacred by one sect or another, and such a bar, in our opinion, is not a denial of religious freedom. It should be added in connection with this point that news films, scientific and educational films, are expressly exempted from censorship (Education Law, Section 123).

Aside from all this petitioner contends that the Board of Regents was without power to rescind a license granted by the motion picture division, because the statute does not expressly provide for a review by the Regents where a license is denied (Education Law, Section 124). The Regents take the view that in rescinding the licenses they were merely correcting the illegal acts of a subordinate body, and that as the head of the Department of Education and charged with the enforcement of censorship provisions of the statute they had the power to do so.

The motion picture division of the Department of Education is successor to the Motion Picture Commission, an independent body established in 1921 when the state first undertook the censorship of motion pictures. The latter [fol. 145] was abolished in 1926 and its functions transferred to the Education Department (L. 1926, ch. 544). In 1927 the law was again revised and provided for the continuation of a motion picture division within the Education Department in language now contained in Section 120 of the present Education Law. This section provides in part:

"There shall continue to be in the Education department a motion picture division. The head of such division shall be a director, who shall be appointed by the regents, upon the recommendation of the commissioner of education. The regents may consolidate such division with the division of visual instruction or may assign to the motion picture division the functions, powers and duties of other divisions, bureaus or officers in the department. The board of regents, upon the recommendation of the commissioner of education, shall appoint such officers and employees as may be needed and prescribe the powers and duties and, within the limits of the appropriations made therefor, fix the compensation of such director, officers and employees."

Section 121 of the same statute authorizes the Regents to establish offices and bureaus for the reception and examination of films.

Section 122 provides for censorship in these words:

"The director of the division or, when authorized by the regents, the officers of a local office or bureau shall [fol. 146] cause to be promptly examined every motion picture film submitted to them as hereina required and unless such film or a part thereof is obscene, indecent, immoral, inhuman, *sacrilegious*, or is of such a character that its exhibition would tend to corrupt morals or incite to crime, shall issue a license therefor.
* * * (Italics supplied.)

Section 124 authorizes a review by the Regents or a committee thereof, at the behest of an applicant in case a license is denied by the motion picture division.

Section 132, however, empowers the Board of Regents in the broadest of language to enforce the provisions and purposes of the entire article relating to the motion picture division.

These brief references to the statute clearly indicate that the motion picture division is a subordinate body of the Education Department under the control of the Board of Regents. We think it equally clear that the latter has the power to correct or rescind any illegal action taken by its motion picture division. If this is not so then the language of Section 132 of the statute must be held meaningless, for one of the provisions and purposes of the statute is to prevent the licensing of a motion picture that is immoral or sacrilegious. If the motion picture division was an independent body, then undoubtedly the maxim cited by petitioner, "*expressio unius est exclusio alterius*," would apply; the grant of an express power to review in one case not specified. The subordinate position of the motion picture division and the supreme responsibility of the Regents to enforce the provisions and purposes of the statute preclude the application of the maxim here.

[fol. 147] We may add that it seems most unlikely from a practical viewpoint that the legislature intended to leave the authorities helpless in a case where through some mis-

conception or inadvertence on the part of the motion picture division a film was illegally licensed. Such would be the result, for instance, where an immoral picture happened to slip by the motion picture division through inadvertence or otherwise. In such a case it would have to be held, if petitioner is right, that the Regents could not correct the situation; and on the other hand, a criminal prosecution would be impossible because the film has been licensed (Penal Law, Section 1141). Such a stalemate would be repugnant to common sense, and every implication is against it. It furnishes ground for the belief that the legislature gave no specific grant of power to the Regents for a review when a license was granted because none was considered necessary; the power to correct was inherent in the statute.

There remains the issue as to whether the Regents acted arbitrarily and capriciously in the matter. Once the validity of the principle of censorship is admitted the issue in each case becomes one of judgment; in fact, that is one of the gravest arguments against the principle. The record before us indicates varying views as to whether the picture in question is so offensive to large groups within the Christian sect as to justify a finding that as to them it is sacrilegious. This conflict of views is proof that the issue is one of judgment to be resolved by the administrative body which has it in charge. The text and content of the picture itself, together with the complaints received, constitute substantial evidence upon which the Regents could act. Under the familiar rule, applicable to all administrative proceedings, we may not interfere unless the determination made was one that no reasonable mind could reach. While some of us feel that the importance of the picture has been exaggerated we cannot justly say that the determination complained of was one that no reasonable mind would countenance.

The determination therefore should be confirmed with \$50 costs and disbursements.

[fol. 149] COURT OF APPEALS OF THE STATE OF NEW YORK

[Title omitted]

STIPULATION WITH RESPECT TO EXHIBITS—May 15, 1951

It is hereby stipulated and agreed that the motion picture film, "The Miracle," shall be deemed a part of the Case on Appeal to the Court of Appeals herein, and shall, if request is made, be exhibited to the Court of Appeals on the argument of this appeal.

It is further stipulated and agreed that Exhibits 4 to 78, [fols. 150-151] returned with Respondents' Answer in the Appellate Division of the Supreme Court of the State of New York, for the Third Department, and omitted pursuant to agreement from the printed record submitted to that Court, shall be omitted from the printed Case on Appeal to the Court of Appeals, but without prejudice to the rights of the parties to refer to the said exhibits or to submit the originals or copies of any or all of said exhibits upon the argument of this appeal, with the same effect as if printed in the Case on Appeal.

Dated, May 15th, 1951.

Ephraim S. London, Attorney for Petitioner-Appellant;
Charles A. Brind, Jr., Attorney for Respondents.

[fol. i]

IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

DESCRIPTION OF EXHIBITS, AND EXCERPTS

Exhibit
No.

1. Statement by Member of the Italian Ministry to the effect that "The Miracle" was approved by the Italian Government for public presentation (Record on Appeal, fol. 217).
2. Statement of President of the Italian Motion Picture Industry to the effect that government approval of the film could not have been secured if the film was considered blasphemous (Record on Appeal, fol. 224).

Exhibit
No.

3. Statement by Director of the Venice Film Festival that the film was accepted there and would have been rejected if considered blasphemous (Record on Appeal, fol. 232).

4. Article in *Life Magazine*:

"The Vatican newspaper, *L'Osservatore Romano*, in reviewing *The Miracle* made no criticism of it on religious grounds * * *"

5. National Board of Review Weekly Guide,—listing "Ways of Love" as a starred, selected feature that is especially worth seeing.

6. Article in a symposium in *The Churchman*, including the report of a telegram sent by 30 clergymen and laymen to the Board of Regents requesting it to uphold the decision of the Motion Picture Board.

[fol. ii]

"I have seen *The Miracle* and have found nothing in it that even remotely suggests an insult to religion or contempt of womanhood, Italian or other. On the contrary, I found this picture to be in many respects a very remarkable example of artistic, deeply moving screen-art."—Rev. Dr. Karl M. Chworowsky.

"I seldom attend a movie. But if I could see pictures like *The Miracle*, I might become a movie fan."—Samuel G. Inman, President of World Press.

"After seeing *The Miracle* I am all the more convinced that the Board of Regents of the State of New York should not revoke the license of this controversial Italian film."—Stanley I. Stuber, Chairman, Commission on Religious Freedom, Baptist World Congress.

"It is hard to conceive of what harm Rossellini's *The Miracle* can do 'good' Roman Catholics * * *"
—John F. Davidson, St. George's Church.

**Exhibit
No.**

7. Letter of the Rev. John Dillenberger, Assistant Professor of Religion and Minister of the Evangelical-Reformed Church:

"Although the plot of the movie is possible only because of Christianity, it has not been stolen from the Christian context; it is simply a reaction to it without any malicious intent. No aspersions are cast on any religious body. There will be some who will find it offensive; in my judgment, they are unduly sensitive and read more into the picture than is warranted."

[fol. iii]

8. Letter of the Rev. F. T. Schumacher, Minister of the Evangelical Reformed Church and Instructor of Religion:

"The movie makes it quite clear that it is dealing with the tragic situation of a demented person and that consequently her religious faith is by no means indicative of that of normal people. No one could assume otherwise, unless they brought to the performance a previously conceived prejudice. In that case the movie is not the cause, but the victim of willful misuse."

9. Letter of the Rev. H. C. DeWindt, Minister of the West Park Presbyterian Church:

"I have this day viewed the film 'The Miracle' and I wish to say that I found nothing whatever in the picture that was sacrilegious or immoral to the views held by Christian men and women. . . ."

I should not hesitate for one moment to take my own son or daughter to see this picture. And I would take them in the assurance that far from being influenced in any evil way by this picture, they would find in it some inspiration and help."

*Exhibit**No.*

10. Affidavit of the Rev. L. Knester, Minister of the First Reformed Church:

"There is no true sacrilegious note, but rather, a vivid example of how people turn to the Church, with great feeling, when they are alone with the great problems of life."

[fol. iv]

11. Letter from Rev. N. R. Farman, Jr., Pastor of the Congregational Church:

"Having just now seen the film in question, I find in it nothing which strikes me as a minister as sacrilegious."

12. Letter from Rev. W. J. Beeners:

"I have seen 'The Miracle' and found in it no reason for the censorship being urged upon it. The film is unquestionably one of unusual artistic merit, and I myself would have deplored it had I been denied the right to see it merely because of the objection of a minority pressure group."

13. Letter from the Rev. A. J. Penner, Minister of the Broadway Tabernacle Church:

"I am a Congregational minister and Pastor of the Broadway Tabernacle (Congregational) Church in New York City. I have seen 'The Miracle' and have found it in no sense sacrilegious."

14. Petition from 10 Clergymen to the Board of Regents:

"The attempt by private pressure groups to force banning of the film 'The Miracle' is an unwarranted interference in the adequate censorship procedures established by the Law of the State of New York."

*Exhibit
No.*

15. Letter from Rev. L. H. Walz, Minister of the Fifth Avenue Presbyterian Church:

"I found it interesting and without trace of blasphemy, but not of such stature as to stir me one way or the other in normal circumstances."

[fol. v]

16. Letter from the Rev. K. D. Barringer, Minister of the First Methodist Church:

"Last evening I had the real privilege of witnessing a really great motion picture, 'The Miracle.' It was the most vivid and realistic picture I had ever seen in my life. * * * I would highly recommend it for showing throughout America. There seems nothing in the picture that appears sacrilegious. My own religious convictions were not offended, and I cannot see where the average Catholic layman would revolt against such a presentation also."

17. Letter from Rev. W. H. Stevens, Jr., Minister of the Zion Methodist Church:

"I saw 'The Miracle' at a private showing in Boston last night. It was not sacrilegious, nor was it an indictment of any womanhood. It was an artistic portrayal of an insane woman's religious fixation. It does portray man's inhumanity to man."

18. Letter from Prof. John E. Smith, of the Department of Philosophy and Religion, Barnard College:

"Despite these reactions to the film, I found nothing whatsoever 'sacrilegious' in it and I can only report great surprise and some bewilderment that it is being objected to on such grounds."

Exhibit
No.

19. Letter from the Rev. R. E. Haynes, Minister of St. Andrew's Methodist Church:

"I saw the moving picture 'The Miracle.' I see nothing in the film that should necessitate a censorship of it."

[fol. vi]

20. Letter of M. E. Bush, Director of Adult Education and Social Relations, American Unitarian Association:

"First, I found nothing in the picture as presented at that showing which I believe should or could be construed as sacrilegious. For my own part, I saw nothing in the picture which I could construe as offensive on religious grounds. It is the story of an unfortunate woman whose delusions took a form undoubtedly suggested by certain concepts in the Christian tradition, but the picture made it very clear that the woman was a victim of delusions and I cannot see that the picture has the effect of belittling or ridiculing anyone's religious faith."

21. Letter of M. Schneider, Advisor on Religious Affairs, Barnard College:

"... the story of what happened in the religious workings of an almost insane mind can have no other significance than that of being the story of what happened in the religious working of an insane mind. To draw any other meaning from it, seems to me to be an unnecessary and laborious attempt to draw profound meanings from something meant to be an artistically dynamic and creative portrayal, which I believe it to be. As such, I cannot believe that it fights any doctrinal or theological battle. Surely this is a question where the liberty of religious choice operates."

[fol. vii]

Exhibit
No.

22. Letter of S. L. Terrien, Presbyterian Minister:

"This is to express to you the serious concern shared by many who have seen the film 'The Miracle' and who believe there is in it nothing offensive or blasphemous."

23. Letter of Prof. P. Lehman, of Princeton Theological Seminary:

"In my judgment, *The Miracle* cannot be regarded as sacrilege. It does not confuse human things with divine things. It is not irreverent for it neither parodies nor depreciates the relations between God and man."

24. Letter of Mrs. E. Pfluke, Jr., Director of Christian Education, First Methodist Church:

"In regard to the film, 'The Miracle' which I pre-viewed last evening, I can see nothing actually sacrilegious about it if we consider the whole picture."

25. Letter of E. Darling, Editor of *The Christian Register*:

"In my judgment, there is nothing even faintly sacrilegious anywhere in the film."

26. Petition of Liberal Ministers' Club of New York, signed by 39 ministers and religious leaders, including the Rev. Pierre Van Paassen, Jerome Nathanson and Henry Neumann, leaders of the Ethical Culture Society:

"We believe that man is a free creature, possessed of freedom of will, and that no pressure group has the right to rob him of the opportunity of making choices for himself in such a matter as viewing a motion picture like 'The Miracle.'"

[fol. viii]

Exhibit

No.

27. Letter of Prof. L. B. Holland, Princeton University:

"In its parts and in its entirety, the film tells a touching human story and it does this with eminent good taste and fine artistry. If this movie is withheld from New York audiences because of the demands and 'declarations' of a pressure group, the Regents will have dealt a foul blow to free expression and democracy which will have deplorable repercussions not only in this country but abroad."

28. Letter of E. J. Smythe, Editor of the *Protestant Statesman & Nation*:

"The appeal to 'Boycott' the moving picture titled 'The Miracle' by the Roman Catholic Cardinal is both dangerous and unAmerican, censorship in any form by any self appointed group, whether it be Racial, Religious or political is basically unsound
* * *"

29. Letter of Rev. G. F. Weary, Minister of The North Shore Unitarian Society:

"For my part I did not find 'The Miracle' in any way offensive."

30. Letter of H. A. Culbertson, Director of Christian Education, Second Congregational Church:

"I have seen the picture *The Miracle*, and wish to report that I see nothing sacrilegious about it. I do not feel that any doctrine of the Roman Church is being refuted, nor do I feel that any religious concept is in danger so far as this picture is concerned."

[fol. ix]

31. Letter of Prof. H. T. Kerr, Jr., Princeton Theological Seminary:

"It is impossible to know what Mr. Rossellini had in mind by his picture, but I am struck by certain

Exhibit
No.

things that appeared to me significant. The mad peasant, for all her indiscretions, is a very devout person with the kind of unsophisticated faith that the Church has always commended; the suggestion that a poor ordinary human being might be elected by God as the recipient of His special grace is strikingly in harmony with the 'Magnificat' (Luke 1:46-55) * * *

32. Letter of Prof. H. H. Wilson, of Princeton University:

"Having seen this film I find it incomprehensible that any religious organization should characterize it as sacrilegious or blasphemous. It is a powerful, symbolic, deeply religious treatment of a theme common in the folk tales of many countries. Far from finding the picture to be irreligious, I consider this profoundly moving story to be a sympathetic portrayal of the meaning of religious faith for a tormented woman isolated from human companionship."

33. Letter of M. A. Hall, Professor of Department of Politics, Princeton University:

"The Constitutional principle which separates church and state works both ways: society, organized politically, cannot impose itself on religious practice, but neither can a church impose itself on political [fol. x] processes in the interests of its own doctrine. Thus, when the Catholic Church interferes with film licensing procedures on the grounds of 'blasphemy', it commits a kind of blasphemy against the very principle on which depends its free existence."

34. Letter of Prof. W. T. Stace, Department of Philosophy, Princeton University:

" * * * No story, considered simply as a narration of facts about the actions of human beings, can be in itself blasphemous or immoral. The blasphemy or immorality, if it exists will always lie in some

Exhibit

No.

interpretation suggested by the way in which the story is told. * * * *The Miracle* tells the story of a pious but half-witted woman who becomes pregnant by a man whom she believes to be St. Joseph, and who then imagines herself to be the Virgin Mary. Since this is a possible human fact, to relate it cannot be sacriligious in itself. The only possible question concerns the interpretation suggested by the manner or presentation. If the film were intended to cause people to scorn or ridicule the doctrine of the Virgin Birth, or to disbelieve it, it could reasonably be called sacrilegious from the point of view of an orthodox Christian. But there is no hint of any such suggestion in the film."

35. Affidavit of Rabbi I. B. Hoffman, Religious Counselor at Columbia University:

"* * * Moreover, the question of sacrilege in regard to one particular theological view is not central to the issue of banning the film for Americans [fol. xi] of all faiths. The real question is censorship. * * * In these days especially, it would seem to me that holding fast to our tradition of freedom is the most important consideration. Risks are involved in almost any course of action. Freedom for artistic, intellectual and religious differences in the theater and on the screen is a precious inheritance which we must uphold even though there may be risks involved."

36. Letter of S. Basescu, Department of Psychology, Princeton University:

"I am thoroughly opposed to any censorship of this film. I have seen the film. I feel that the only basis for branding this film 'sacrilegious' is one's personal doubt as to the validity of one's expressed religious beliefs."

*Exhibit**No.*

37. Letter of Prof. W. F. Galpin, Syracuse University:

"In the instance now before the public it would seem to me that no great harm can result from a public showing of 'The Miracle'. Far greater harm and injury to democratic rights and freedom will result if the action of the State Board of Censors in approving of this film, is revoked."

38. Letter of Prof. G. A. Barrois, Princeton Theological Seminary:

"I have seen the motion picture 'The Miracle', and I do not find anything blasphemous or sacrilegious in it. It implies no insult to religion, intentional or not intentional. It contains no attack [fol. xii] against consecrated individuals, or groups of individuals, or against consecrated things (using here the word *consecrated* in the restricted meaning of Roman Catholic theology and Canon Law)."

39. Affidavit of Prof. H. W. Janson, New York University:

"A great and profoundly moving motion picture. It is inconceivable to me how it could possibly be interpreted as blasphemous or in any sense anti-religious."

40. Letter of J. K. Sefcik, Princeton Theological Seminary:

"I saw the movie entitled *The Miracle* last night, and to my mind, there is nothing sacrilegious in it. . . ."

The experience of Nanni can be as truly a religious experience as Paul's conversion on his way to Damascus. To judge it as not thus, is to judge the workings of God."

41. Letter of E. W. Mills, former president, National Conference of Methodist Youth:

" . . . But I cannot see how this picture could be considered blasphemous or even uncomplimentary toward any religious group."

Exhibit

No:

42. Letter of J. V. Watson, Secretary, Protestant and Other Americans United for Separation of Church and State:

" * * * as a practicing Christian and a believer in the virgin birth of Jesus I could see absolutely nothing in the picture which could possibly offend anyone's religious convictions."

[fol. xiii]

43. Letter of F. M. Dunn, Jr.:

"It has been charged that *The Miracle* is sacrilegious. If sacrilegious means attacking the doctrine of some faith, or if it means holding some tenet in ridicule, then I must state truthfully that *The Miracle* can in no sense be described by this word."

44. Statement of Mrs. E. Cobb, Writer, Educator:

"I felt that this movie was a really profoundly impressive statement of the *power* that religion can give to a deficient and helpless personality."

45. Joint letter of Mary M. Bigelow, Psychologist, and J. H. Bigelow, Mathematician, of The Institute for Advanced Study:

"We consider this play to be quite opposite to sacrilegious and see no reason whatever that its showing should be restricted in any way."

46. Statement of Prof. H. A. Singer, New York University:

"I, Dr. Henry A. Singer, having seen the motion picture, 'The Miracle' find nothing objectionable, blasphemous or censorable in the film as shown."

47. Letter of Mrs. Howard Murford Jones:

"I saw nothing irreligious in it. On the contrary, the deep devotion of the woman, her profoundly ingrained mysticism, her love of God, of the Saints, her certainty that they would look after her and raise

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her from her lowliness all seemed to me exceptionally religious in content."

[fol. xiv]

48. Letter of Mrs. H. B. Brinig, Director of Church Activities, Marble Collegiate Church:

"I did not interpret it as an attack upon the Christian Faith nor do I believe it should be suppressed by the force of any pressure group even if it were. As a Christian, I'm sure it is up to us to make the values of our religion so apparent and workable that such a movie would easily be seen as puerile and irrelevant by comparison."

49. Letter of Alfred Cole, Department of Homiletics, Tufts College, School of Religion:

"so far as any sacrilege was concerned, I could not find any whatsoever."

50. Letter of the Rev. B. O. Waterman, Minister of Mount Vernon Larger Parish:

"'The Miracle' is apparently a good film and should be viewed with an open mind * * *"

51. Letter of E. F. Widermuth:

"Freedom of religion does not confer greater rights upon one sect or creed than it does upon all others anymore than it grants less rights to one sect or creed than it does upon all others. No organized religion has a monopoly upon virtue, righteousness or morality."

52. Letter of G. Campbell:

"Frankly, I was surprised to think that anyone would discover in this film anything sacreligious. It is a simple and moving story, but I can see no religious controversy contained within it."

[fol. xv]

Exhibit

No.

53a. Letter to the *Herald Tribune* from Alfred H. Barr, Jr., Director of Museum of Modern Art:

b. Letter of Kathleen Rogow, of the Roman Catholic faith:

“‘The Miracle’ contains nothing offensive to Catholicism.”

c. Letter of Jeremiah F. Carroll, of the Roman Catholic faith

d. Letter of Tiffany Thayer, writer

e. Letter from Rev. B. J. Bamberger, Rabbi of West End Synagogue:

“I have seen *The Miracle* and find in it no threat to the general welfare. Whether it is sacrilegious can be decided only in terms of a specific theology. For the State to intervene in determining such a question, on which men of the highest integrity and piety disagree, is not only a violation of Constitutional principles, but a serious threat to the independence of all religious agencies.”

54. Article by Otto L. Spaeth, of the Roman Catholic faith, Director of the American Federation of Arts:

“At the outbreak of the controversy, I immediately arranged for a private showing of the film. I invited a group of Catholics, competent and respected for their writings on both religious and cultural subjects. The essential approval of the film was unanimous.

There was indeed ‘blasphemy in the picture—but it was the blasphemy of the villagers, who stopped at [fol. xvi] nothing, not even the mock singing of a hymn to the Virgin, in their brutal badgering of the tragic woman. The scathing indictment of their evil behavior, implicit in the film, was seemingly overlooked by its critics.”

*Exhibit**No.*

55. Excerpt from a sermon of the Rev. Karl M. Chworowsky:

"I sat through the performance with a growing sense of the reverence and beauty that pervade the story, and at no time did I find the slightest urge either to think unkindly of Italian womanhood or of the Catholic religion."

56. Text of radio program of "Jewish Life" broadcast over Station WGMS, Washington:

"Now the banning of 'The Miracle' seems to me unnecessary and unwise. Let's have faith in the basic tolerance of Americans. Let's let people see 'The Miracle' and decide for themselves what it says."

57. Text of radio broadcast by Bill Leonard over Station WCBS, New York:

"Before Mr. McCaffrey decided this wasn't a proper thing for New Yorkers to see I saw it. I found it powerful and moving: bitter—but still a story of great and real love. Sacrilegious is a tough word. Its use in connection with *The Miracle* never occurred to me."

58. Statement to the Press of Rev. J. Spencer Kennard, Jr.:

"Nobody but a bigot could see blasphemy in such a film. The day when stark realism of this sort cannot be seen on the screen we will have returned to the mentality of the Middle Ages."

[fol. xvii]

59. Statement of Rev. Donald Harrington, Minister of the Community Church:

"I say, after careful study, and in all humility, that I see nothing sacrilegious in it. It is a touching and simple story of human life which seems to me to say that every birth of a child is a miracle of transforming wonder, even when it occurs under the direct

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circumstances, and that merciful and sensitive man should so regard it."

60. An article by Robert Hatch in *The New Republic*:

"To blaspheme is to revile or curse the Deity and 'The Miracle,' whatever its shortcomings, is a powerful statement of the mercy and peace that God bestows on his most unhappy and forsaken children."

61. An article by George Seldes in *The Nation*:

"To be sacrilegious, the picture must hold religion up to contempt; the law does not say that a picture must be respectful to all the tenets of any single sect or church—it must respect religion."

62. Letter from Allen Tate, poet and critic, of the Roman Catholic faith:

"To my mind, this action is a violation not only of the relation of church and state but of the great Catholic moral and intellectual tradition, and points also to a latent heresy within the church that has been variously known as Puritanism and Jansenism. [fol. xviii] * * * When we remember that the works of Dante Alighieri were publicly burned by a fourteenth-century Pope, the weapon of suppression begins to look ridiculous."

63. Article by Harold Clurman, in *Tomorrow*:

"*The Miracle*, while strangely impersonal and unsentimental, is deeply religious. One might say that it is compassionate without tears, Christian without religiosity. The church we see in the picture is the real church, as the Italian people know it."

64. Editorial from the *Wilmington, Del., News*:

"Metropolitan film critics, while recognizing that 'The Miracle' might appear sacrilegious to some persons, were for the most part inclined to feel that it

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it was reverent in effect and in intent. Some of them even said that it contained high moral and spiritual values. Certain Protestant groups have expressed similar opinions. . . .

If there were widespread or universal agreement that 'The Miracle' deserved that label, no question would arise. But when religious leaders disagree, it would seem that a secular body like the Board of Regents might well assume that a reasonable doubt exists. Censorship is easily abused, and such abuse violates fundamental American principles. It certainly should not be exercised where no clear-cut case exists, or in response to group pressures."

[fol. xix]

65. Editorial, *New York Times*:

"But when there is doubt, it seems to us essential to lean away from censorship. The contrary course can tend too easily toward thought control. These are dangerous times, and any move in that direction would make them only the more dangerous."

66. Report in the *New York Post* with petition to the Regents signed by critics, writers, editors, composers, etc.:

"While groups protesting showing of the film have every right to persuade others not to see the film, they have no right to impose their views upon the rest of the population of the state. Revoking licenses at the instance of private pressure groups would permit them to dictate what other Americans may or may not see or hear."

67. Article by Alice Hughes in the Reading, Pa. *Eagle*:

"But in a country where separation of Church and State and respect for freedom of religion are fundamental by Constitution it seems wrong for anybody, even the License Commissioner, to assume authority to prevent the showing of any film purely on sec-

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tarian religious grounds. Those to whom the subject seems blasphemous can stay away. As no voices have risen against 'The Miracle' for any other reason, its suppression seems unwarranted."

[fol. xx]

68. Report from the *New York Daily News* on "The Miracle":

"'The Miracle' is artistic and beautifully done by both the star and the director. Love here is defined as 'ardent affection, passionate attachment, men's adoration of God, gratification, devotion.'"

69. Report of sermon delivered by Rev. P. A. Wolfe, Minister of the Brick Presbyterian Church:

"... * looking from my Presbyterian background, I did not find it sacrilegious."

70. Article in *The New York Post* reporting the receipt of many letters by Mayor Impelleri, which letters protested against the banning of "The Miracle"
71. Newspaper reports of protest to the Board of Regents against the proposed ban of "The Miracle"
72. Newspaper reports of protest to the Board of Regents against the proposed ban of "The Miracle"
73. Newspaper reports of cable sent by Roberto Rossellini, producer of the "The Miracle" to His Eminence, The Cardinal Spellman:

"In 'The Miracle' men are still without pity, because they still have not come back to God, but God is already present in the faith, however confused, of that poor, persecuted woman, and since God is wherever a human being suffers and is misunderstood, 'The Miracle' occurs when at the birth of the child the poor, demented woman regains sanity in her maternal love."

[fol. xxi]

Exhibit

No.

74. Column by Max Lerner, in *The New York Post* on the censorship of "The Miracle":

"Is this blasphemy? Only if you stretch the story into an effort to travesty the original one of Mary and Joseph and Jesus. If this were the intent, it is hard to believe that the picture would have been so well received in Italy itself, whose people have a great religious tradition."

"The real blasphemy is that of a little man who seems for the moment to have blundered into assuming godlike powers of decision for the rest of us."

75. Editorial in the Washington, D. C., *Post* on the banning of "The Miracle":

"New Yorkers ought to be free to take it or leave it as they choose. This freedom of choice, which is the essence of a free society, has now been destroyed—we hope only temporarily—by the caprice of a single official."

76. Editorial in the *Boston Herald* on the banning of "The Miracle":

"The blasphemy charge, therefore, appears to be quite absurd."

77. Article in the *New York Times* on the condemnation of "The Miracle":

"But the basic consideration in the case of the pictures named above—and indeed, in the case of any picture which some element or groups may oppose—is whether real freedom of expression on the screen [fol. xxii] is sincerely desired and whether the cause of this freedom is worth enduring offense to maintain. For it goes without too much saying that freedom is restricted and imperiled by every successful endeavor to suppress or willfully expurgate a film for any

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cause whatsoever, except patent and gross obscenity.

"* * * the individual who suspects that his sensibilities may be offended by a particular picture can simply stay away. That, in the last analysis, is the best kind of censorship."

78. Report in the *New York Times* of sermon of Rev. Donald Harrington, Pastor of the Community Church:

"The right to speak includes the right to hear, and freedom of the screen is guaranteed to all Americans under the freedom of speech clause of our Bill of Rights. This means that every citizen has the right to decide for himself which films he shall see or shall not see, and no hierarchy nor church nor private group of any kind has the right, by official action, to rob him of this choice."

[fols. 1-5]

EXHIBIT 6

(The Churchman)

The Cardinal: Critic and Censor

By the Rev. Dr. Karl M. Chworowsky

Francis Cardinal Spellman issued a statement calling upon his fellow-Catholics in the United States to boycott the Film *The Miracle*, then running at the Paris Theatre, Manhattan, and to oppose the showing of this film wherever it might appear.

The Miracle is the third part of a film-trilogy entitled *Ways of Love*. It was promptly condemned by the (Catholic) National Legion of Decency as a "sacrilegious and blasphemous mockery of Christian religious truth." On December 23 its showing at the Paris Theatre, Manhattan, was temporarily stopped by the New York City Commissioner of Licenses, who pronounced it "a blasphemous [fol. 6] affront to a great many of our citizens." A few

days later, a Justice of the Supreme Court restrained the commissioner from stopping the picture, claiming that the state law demanded this decision.

The cardinal in his statement read at all masses in St. Patrick's Cathedral, Sunday, January 7, severely criticized the state board of censorship, officially known as the Motion Picture Division of the State Education Department, for approving the picture, and condemned the picture as "art at its lowest," as "diabolical deception at its depth," as "a vile and harmful picture," as "a despicable affront to every Christian . . . a mockery of our faith," and as "a vicious insult to Italian womanhood." Further passages from the cardinal's statement, that lose nothing by being here reported out of their context, read: "this picture blasphemously and sacrilegiously implies a subversion to the very inspired word of God. . . . The perpetrators of *The Miracle* unjustly cast their poisonous darts of ridicule at Christian faith and at Italian womanhood, thereby dividing religion against religion and race against race. . . . We are confident that all good Americans will unite with us in this battle for decency and Americanism."

I have seen *The Miracle* and have found nothing in it that even remotely suggests an insult to religion or contempt of womanhood, Italian or other. On the contrary, I found this picture to be in many respects a very remarkable example of artistic, deeply moving screen-art. Certainly the portrayal of the chief character of the play by the distinguished Italian actress Anna Magnani was nothing short of virtuosity at its best. As for the story itself, I know of no finer plea made for its legitimate use as material for film or stage than the message sent by Roberto Rossellini himself to Cardinal Spellman in defense of *The Miracle*. This message is worth quoting: "In *The Miracle* men are still without pity because they still have not come back to God, but God is already present in the faith, however confused, of that poor, persecuted woman; and since God is wherever a human being suffers and is misunderstood, *The Miracle* occurs when at the birth of the child the poor, demented woman regains sanity in her maternal love."

Film critics will find points of disagreement regarding certain details of the script, the production, and the direc-

tion of *The Miracle*; but I am convinced that most of them will agree that here the genius of Rossellini has again produced a masterpiece of the contemporary cinema.

I find it difficult to imagine any person of culture and esthetic appreciation leaving a showing of *The Miracle* with anything but a quickened sense of his emotions of pity, compassion, and understanding not only for the poor, mentally deranged woman who is the chief figure of the story, but for all poor, ignorant, superstitious and mistreated souls that fall easy prey to the ridicule and contempt of their misguided neighbors. I cannot conceive of any intelligent member of *The Miracle* audience even remotely gaining the impression that in this picture Catholicism was being attacked or that a slur against religion in general was intended.

Of course, I grant the cardinal and his subordinates and colleagues every right to criticise what they find objectionable and what they hold to be dangerous to the moral and [fol. 8] spiritual health of American Catholics. But it would seem to me that in this particular instance the cardinal has gone just a little too far beyond the right he has as an American citizen and as a churchman to voice his opinions and objections, for in his blast against *The Miracle* he presumes to speak not only for the Catholics of the United States but for non-Catholics as well; this he does when he calls upon "all people with a sense of decency" to refrain from seeing *The Miracle*. The arrogance of his presumption that only they who agree with him are "decent" is aggravated by his use of the phrase "we, as the guardians of the moral law must summon you etc."

As a religious liberal and a Protestant clergyman I take emphatic issue with the cardinal when he glibly assumes that he and his fellow-Catholics are "the guardians of the moral law," and I further resent his statement to the effect that "the perpetrators of *The Miracle* unjustly cast their poisonous darts of ridicule at Christian faith and at Italian womanhood, thereby dividing religion against religion and race against race." I maintain that if any such "dividing against religion and race" has been done in connection with the controversy over *The Miracle* in New York City, this has been done by the cardinal himself when self-righteously and

arrogantly he refers to the Catholics of America as "the guardians of the moral law." I have no reason to believe that even all American Catholics will follow the cardinal in his crusade against *The Miracle*, which I hold to be not only innocent of the charges hurled against it by a high ecclesiastic but also an artistic attraction for large audiences of [fol. 9] perfectly moral, decent, and religious New Yorkers. And I wonder whether the cardinal has never stopped to realize that by his blast against *The Miracle* he is driving thousands of the curious to see it, while silence on his part might have had just the effect he desired, viz. to reduce attendance at the Paris Theatre and elsewhere where this picture may be shown.

This incident is just another proof of the correctness of the charge made by Paul Blandshard in his book *American Freedom and Catholic Power* when in the chapter on "Censorship and Boycott" he draws a very realistic picture of what Catholic influence in America may do if left undisturbed and unhindered. Dr. Blandshard does not deny the Catholics of America the right to hold their particular beliefs and opinions and to act in conformity with these; he simply points out the danger of Protestant complacency and indifference in the presence of a religious and moral philosophy that at so many points not only differs fundamentally from the Protestant way of life but also threatens many of those values and institutions that Protestants, through the centuries, have come to regard as vital and essential. Therefore Dr. Blandshard calls upon Protestants and all liberals of whatever faith to assert and exercise their right and freedom to criticise and oppose those whose "faith and morals" tend to demean much that is sacred in the "faith and morals" of the non-Catholic world. There is much grim truth in these sentences from the above-named chapter in the Blandshard book: "Actually the Legion of Decency, in its private censorship of about 450 films a year, is far more concerned with Catholic dogma and Catholic [fol. 10] social philosophy than with decency" (page 199), and he continues, "it (the Legion) begins where the censors of the government and industry leave off. It seeks to rate all films according to a kind of super-code that emphasizes distinctly Catholic taboos."

Has the Catholic church, has the cardinal the right to exercise jurisdiction, either direct or indirect, over the artistic tastes and morals of Catholic Americans? I suppose they have, as long as Catholics will submit to such jurisdiction. But an equally important point is that we Protestants have the same right and the same privilege and the same responsibility to state and maintain our case and to defend our convictions and principles, even when this involves public disagreement and controversy. It is therefore most surprising and disquieting to find that the cardinal's attack upon *The Miracle* has called for so little response from non-Catholic, especially Protestant, quarters.

I believe the great majority of my fellow-Americans will agree with me that *The Miracle* is an example of moving and satisfying film-art. Whether in the company of two other and lesser films in the trilogy *Ways of Love* it appears at its best, is another question. I have asked the members of my church to see *The Miracle* and to judge for themselves whether it is, as bad as the cardinal says it is, or as good as I think it is.

I can only add that I have a feeling that while all of us welcome comments on such topics as literature, drama, art, and films even from religious leaders and churchmen in high position, we expect such comments to be both enlightened and enlightening. It is my humble and honest opinion [fol. 11] that the ban hurled against *The Miracle* by His Eminence, Francis Cardinal Spellman, is neither enlightened nor enlightening.

A Symposium

I seldom attend a movie. But if I could see pictures like *The Miracle*, I might become a movie fan. How any one, much less a devout Roman Catholic, could desire to keep people from seeing this picture, I cannot understand. To me it was a real spiritual experience. It is life in the raw, among the country people who make up three fourths of the world, whose only comfort is religion—religion which is half truth and half superstitions that have been handed down from their ancestors and confirmed by their simple-minded priests.

Most of the churches in Latin America are built on spots where the Virgin or some patron saint appeared to an ignorant Indian, a devout child, or a worshipping peasant, and told the chosen messenger to tell the bishop he was to build a chapel on that spot. I cite this not to condemn such religion. I, for one, would not take away from these suffering souls the only comfort they have unless I was prepared to give them something better.

Because *The Miracle* is a profound psychological study, its interpretation will depend on what the spectator himself brings to this story. The theologian studying religion, the sociologist studying ways of aiding the poor, parents who have gone through the agony of child bearing, or an artist interested in life and beautiful scenery, I should think, [fol. 12] would appreciate *The Miracle*. The ordinary box office patron will probably give three cheers for something different from the Hollywood cliché.

Samuel Guy Inman, President, World Press.

After seeing *The Miracle* I am all the more convinced that the Board of Regents of the State of New York should not revoke the license of this controversial Italian film. The Roman Catholic Church has a perfect right to place a ban on the picture as far as Roman Catholics are concerned, but it certainly has no right to impose its views upon the rest of the citizens. This is still a free country and thought-control is not in order. When private pressure groups begin to dictate what we can see and hear and do, then we are headed for the worst kind of dictatorship.

Stanley I. Stuber, Chairman, Commission on Religious Freedom, Baptist World Congress.

It is hard to conceive of what harm Rossellini's *The Miracle* can do "good" Roman Catholics—unless to think, with the awful possible consequence of honest doubt, is to be done harm. It is irrelevant to consider the possible effects on "bad" Christians of any persuasions. The film is imaginative and strikes the spectator as sincere—an interesting and artistic study in psycho-pathology. Scotto does an exceptional job in Pagnol's "*Jofroi*"—a highly amusing film. The Renoir skit based on de Maupassant is light and

[fol. 13] farical adult fare. In sum there is a good two hours' entertainment for the discerning.

John F. Davidson, St. George's Church, New York.

There are several things about *The Miracle* which I dislike. Dubbed in English titles are handicap; for this reason I am not fond of foreign language films. And I found the rough and vulgar irreverence toward sacred symbols harshly displeasing, though I do not doubt that in this regard the film presents a true picture of the attitude of many illiterate Italian peasants.

But the entire effect of the play is pitiful rather than sacrilegious. I can see points at which the crudely superstitious type of Roman Catholic might take offense. If for instance he interprets the crazed shepherdess as a caricature of the Virgin, or sees in the facial makeup of the vagabond a subtle likeness to traditional portraits of Jesus. In general it does not seem to me that the story casts ridicule upon any matters of belief which are not rather ridiculous to begin with.

Pity is the dominant mood of my response to this film play. It is a pitiful picture of human brutality on the part of ignorant people who imagine they are religious. It is a pitiful revelation of the dark depths of superstition which pass for religion among the lower classes of Roman Catholic European peasants. It is a pity that the elements of trust in the play have not evoked from Catholic leaders an attitude of repentance rather than an attempt at repression.

F. Howard Callahan, Church of St. Paul & St. Andrew, New York.

[fol. 14] If Cardinal Spellman's ranting against *The Miracle* did nothing else, it made the venture a profitable one for the theater, and probably the producers of the films. Lines of people waited to be seated, and were amused by both the signs carried by the Roman Catholic pickets, and also the chants which accompanied their march. A novel thing about the picket line was the camaraderie that it had with the police. *The Miracle*, singled out for the cardinal's anathema, has splendid acting, superb camera work and is frightfully grim. Artistically it was not up to the first two of the group of three—*A Day in the Country* and *Josroi*.

These are both in French, and *The Miracle* in Italian. Tragedy here was so mixed with wonderful gallic humor that they deserve a triple A rating. One could well imagine that the hierarchy might be more disturbed by the sharp satire of a French priest in *Jofroi*, than by what is called "blasphemy" in *The Miracle*. One of the pickets proclaimed, "This degrades American womanhood." Another kept saying, "This is a foreign pitchur, there are good American pitchurs over on Broadway." To make any relevance out of the first was impossible. But taking the two together it might add up to America contra mundi so prevalent today. Esthetically the judgment on these films must be that American producers have much to learn and practice in the art that other countries can show them. Is that what the fight is all about?

Andrew M. Van Dyke, Executive Secretary, Episcopal League for Social Action.

[fol. 15] A telegram, signed by thirty clergymen and laymen, asked the Board of Regents to uphold the decision of its Motion Picture Board to continue the exhibition license granted to *The Miracle*. The telegram said:

"The attempt by private pressure groups to force banning of *The Miracle* is an unwarranted interference in the adequate censorship procedures established by the law of the State of New York. It is our position that while the Roman Catholic Church has every right to forbid any film or other artistic production to its own communicants, it has no legal or moral right to attempt to force its view on state as a whole. As American citizens and Protestants we respectfully urge that you uphold the responsible decision to license *The Miracle* made after careful consideration by your own qualified Motion Picture Board."

The telegram was signed by the following: Clergymen: Thomas Attridge, Richard Aselford, Karl Baehr, John A. Bell, John Bradbury, Emory Stevens Bucke, Karl M. Chwowsky, Donald B. Cloward, Robert M. Cook, Harold E. Fey, Donald Harrington, John Paul Jones, J. Spencer Kennard, Thomas McCandless, Jack R. McMichael, John Maynard, Wendell Phillips, Charles E. S. Ridgway, Guy Emery Ship-ler, also J. Smith, Geza Takaro, Carl Hermann Voss,

David Rhys Williams, Joseph H. Titus, Andrew M. Van Dyke. Laymen: Glenn L. Archer, Henry Pratt Fairchild, Freda Kirchwey, Clyde R. Miller, Richard R. Wood.

[fol. 16]

EXHIBIT 7

Columbia University in the City of New York

[New York 27, N. Y.]

Department of Religion

January 29, 1951.

Board of Regents, New York City.

DEAR SIRS:

I, John Dillenberger, whose official address is Earl Hall, Columbia University, and who am an assistant professor of religion in said institution and a minister of the Evangelical-Reformed Church, declare that I have seen "The Miracle" and do not find it sacrilegious.

"The Miracle" is not an entertainingly pleasant movie; but this has nothing to do with the issue of whether or not it should be shown. Again as a matter of interpretation, the movie can be said to have a positive religious dimension or to express the insane faith of an insane woman. In the first instance, an impossible situation, made plausible by insanity, is redeemed not by a sub-moral but by a trans-moral religious dimension. In the second instance, the inner psychological and religious workings of a demented mind are reflected through superb directing and acting. But neither the best nor the worst interpretation justifies the term sacrilegious.

Although the plot of the movie is possible only because of Christianity, it has not been stolen from the Christian context; it is simply a reaction to it without any malicious [fol. 17] intent. No aspersions are cast on any religious body. There will be some who will find it offensive; in my judgment, they are unduly sensitive and read more into the picture than is warranted. That is their right and privilege. But what an individual or group reads in is not legitimately termed sacrilegious, nor does it constitute grounds

for banning it. To do so would put us into the intolerable situation of having every question of freedom determined by the pressure of some religious body. Let those churches to whom it appears sacrilegious tell their constituents to stay away from the movie; this is their right and their freedom. But if they insist that it be banned, they are trespassing upon the freedom of those who honestly believe that it is not sacrilegious and who see nothing offensive in it, either from moral or religious grounds.

Respectfully yours, John Dillenger.

[fol. 18]

EXHIBIT 8

Columbia University in the City of New York

[New York 27, N. Y.]

Department of Religion

January 29, 1951.

To the Members of the Board of Regents:

I, Frederick T. Schumacher, an ordained minister of the Evangelical and Reformed Church and Instructor in Religion at Columbia University (address: Religion Department, Earl Hall, Columbia University) declare that I have seen "The Miracle" and that I do not consider it sacrilegious.

The movie makes it quite clear that it is dealing with the tragic situation of a demented person and that consequently her religious faith is by no means indicative of that of normal people. No one could assume otherwise, unless they brought to the performance a previously conceived prejudice. In that case the movie is not the cause, but the victim of willful misuse.

I have heard the movie accused of casting aspersions upon the birth of Christ and sections of the Christian dogma related thereto. Nowhere does the movie itself indicate, imply, or suggest that it is attempting to explain or criticize the divine birth on the basis of parallel. Only the hypersensitive or willfully malicious would read into the movie

such a meaning. One cannot brand a movie (or any creative work) as sacrilegious only because of possible presuppositions and prejudices *brought to it* by the viewers. I am [fol. 19] thoroughly opposed to outlawing an authentic, sensitive and compassionate movie simply because it might be seen by people who are sacrilegious. An attempt (even by a majority) to ban the movie on this basis is really an attempt to ban the ideas and views which some people might bring to it and thus becomes outright "thought control"—a process which, though present elsewhere in the world, is totally at variance with both American democracy and the Christian faith itself.

Respectfully yours, Frederick T. Schumacher, Instructor in Religion.

EXHIBIT 9

West-Park Presbyterian Church

Amsterdam Avenue and 86th Street in the City of New York

Harold C. DeWindt, Minister

The Church House, 165 West 86th Street

January 25, 1951.

Board of Regents, University of the State of New York

MY DEAR SIRs:

I have this day viewed the film "The Miracle" and I wish to say that I found nothing whatever in the picture that was sacrilegious or immoral to the views held by Christian [fols. 20-22] men and women. The acting and the photography were of the very high order. The picture in my judgment contains no offense whatever, and is far superior to scores of pictures which I have seen in the last year or two that have been produced in Hollywood. Many of these pictures, I believe, produced a baleful influence on the moral and spiritual life of the people viewing them.

I should not hesitate for one moment to take my own son

or daughter to see this picture. And I would take them in the assurance that far from being influenced in any evil way by this picture, they would find in it some inspiration and help.

As a Protestant minister here in New York City, and as an officer of the Protestant Council of New York, I respectfully ask that your Board do not ban this picture as a film offensive to the Christian conscience. Certainly if "The Miracle" is banned, it would be a grave travesty on the freedom of the people of the City of New York.

Faithfully yours, Harold C. DeWindt.

HCD:al.

[fol. 23]

EXHIBIT 12

The Rev. W. J. Beeners, 100 Stockton Street, Princeton,
New Jersey

January 26, 1951.

Board of Regents, State of New York.

GENTLEMEN:

I have seen "The Miracle" and found in it no reason for the censorship being urged upon it. The film is unquestionably one of unusual artistic merit, and I myself would have deplored it had I been denied the right to see it merely because of the objection of a minority pressure group.

As regards the strenuous objections now being voiced by the Roman Catholic hierarchy in America, I find it peculiar that "The Miracle" played to Italian audiences for some two years without like interference from the more central source of Roman Catholic authority—Rome itself.

I sincerely believe it would be a great mistake to permit the judgment of a few to determine the movie diet of the whole state. Such arbitrary restriction is more of the essence of totalitarianism than of the democracy which Roman Catholics in America claim to support to such loyal degree. If the Roman Church feels that the film is offensive, let it prohibit the seeing of it among its own people and let the rest of us make our own choices.

Respectfully yours, W. J. Beeners.

Broadway Tabernacle Church—Congregational

Broadway and Fifty-Sixth Street

211 West 56th Street New York 19, N. Y.

Director of Social Services, Miss Sadie M. Gregory

Ministers: Albert J. Penner, D.D. Joseph D. Huntley, B.D.

January 25, 1931.

Board of Regents, Albany, New York.

GENTLEMEN:

In view of the issues that have been raised relative to the motion picture, "The Miracle," issues both religious and otherwise, I wish to express my own opinion in this matter. I am a Congregational minister and Pastor of the Broadway Tabernacle (Congregational) Church in New York City.

I have seen "The Miracle" and have found it in no sense sacrilegious. I found it in generally good taste. It does not treat the delicate theme either lightly or irreverently. The poor shepherd girl in the story is sinned against and abused and ill-treated, but her own illusions are not a subject of mockery but rather of pity. If the religious issue [fol. 25.] were the only issue, I would oppose the picture being banned.

However, the religious issue is not the only issue nor is it the main issue. The main issue, in my opinion, is whether a part of the community—in this case, the Roman Catholic Church—can dictate what the entire community may or may not see. It seems to me that the clear answer to that must be "no." The principle of the freedom of the press is firmly established in our American life. The principle of the present case is precisely the same.

The Roman Catholic Church can, of course, forbid her members to see this film. No one disputes this right. They can and do forbid, with perfect right, their members to read certain books, but they have no right to forbid me to read those books nor to make such books inaccessible to me. Nei-

ther have they the right to forbid me to see this or other films if I care to do so, nor make such films inaccessible.

I, therefore, resent the efforts this church, by political and economic pressure, by threat of boycott and reprisal, has made to seek to place the same restraints upon an entire community that it places upon the Roman Catholic part of it. To me this is a clear violation of fundamental personal rights. I therefore, trust that these rights will, in this instance, be upheld and that this film will not be banned.

Very truly yours, Albert J. Penner.

ajp/eb,

[fols. 26-27]

EXHIBIT 14

New York, January 16, 1951.

To the New York Board of Regents:

The attempt by private pressure groups to force banning of the film "The Miracle" is an unwarranted interference in the adequate censorship procedures established by the Law of the State of New York.

It is our position that while the Roman Catholic Church has every right to forbid any film or other artistic production to its own communicants it has no legal or moral right to attempt to force its views on the public as a whole.

As American citizens and clergymen, we respectfully urge that you uphold the responsible decision to license "The Miracle", made after careful consideration by your own qualified Motion Picture Board.

J. S. Kennard, Jr., R. John Bloomquist, Murray Drysdale, Earl C. Morgan, Emerson Harbaugh, Emanuel Soni, Marshall L. Scott, Richard A. Riser, G. W. Abington, Andrew M. Van Dyke.

EXHIBIT 16

First Methodist Church
 Corner Beach Street and Janvrin Avenue
 Revere, Massachusetts

Kenneth D. Barringer, Pastor
 67 Lowe Street
 Phone REvere 8-4844

January 26, 1951.

Mr. Ephraim S. London
 150 Broadway
 New York, N. Y.

DEAR SIR:

Last evening I had the real privilege of witnessing a really great motion picture, "The Miracle." It was the most vivid and realistic picture I had ever seen in my life. Technically, it rates very high in my estimation. Its presentation of a real human tragedy, caught in the web of circumstances, was done with a genuine artistic sensitivity. I would highly recommend it for showing throughout America.

There seems nothing in the picture that appears sacrilegious. My own religious conviction were not offended, and I cannot see where the average Catholic layman would revolt against such a presentation also. I can see where the Catholic hierarchy would find this film objectionable. It portrays a type of religious expression that our Catholic clergy would deem inferior to *own our* American Catholic religious life. It also remotely suggests that visions and miracles might have their logical explanation; thus not be directly derived from the divine. Still I do not condemn it. I believe it to be a grave error for any religious minority to try to control thought. They have a perfect right to object to its religious implication, but they do not have the right to prevent others (or even their own) from witnessing a movie that present points with which they find disagreement.

The showing of the film at the Community Church auditorium was in every way commendable. The picture was

excellent and the discussion that followed was rewarding. In the discussion there was a constant repetition of one point especially with which I heartily agree. That question concerned the ultimate question of Civil Rights. Does a minority in our American Democracy ever have the right to suppress, and to bring such pressure against a public body, so as to force that body to deprive the majority of witnessing or having access to a form of art or a story done in motion picture? I believe not. That right is re- [fols. 30-41] served to no one. We are protected from such an abuse to our freedom by our Constitution. If the Board of Regents reverse the lower board and ban this film, they will be establishing a dangerous precedent that might rock the very cradle of our democracy.

Sincerely yours, Kenneth D. Barringer, Minister.

[fol. 42]

EXHIBIT 23

20 Alexander Street
- 26 January 1951.

The Board of Regents
University of the State of New York
New York, New York

Gentlemen;

I am writing to express to you my great concern over the current campaign of the Roman Catholic Church against the showing of the film, "The Miracle".

I have seen *the Miracle* and have come to the conclusion that the question of sacrilege must be sharply differentiated from the question of censorship.

In my judgment, *the Miracle* cannot be regarded as sacrilege. It does not confuse human things with divine things. It is not irreverent for it neither parodies nor depreciates the relations between God and man. Most important, however, is the consideration that to declare that *The Miracle* is sacrilege is to declare that the piety of the Roman Church is itself sacrilege. This piety is nourished in considerable measure by the veneration of the saints.

Under the conditions of Italian peasant life, it is quite conceivable that the veneration of the saints could impress mentally disordered persons in exactly the way suggested in the film. One cannot, it seems to me, regard the fruitage of Catholic piety as sacrilegious, without regarding the veneration of the saints itself as sacrilegious. Perhaps it is the awareness of some such ambiguity as this which [fols. 43-45] has divided Catholicism itself on this film. It cannot be too much emphasized that a film which was approved in Italy which is, in these matters, and by the Lateran accord, under the control of the Vatican, ought not to be banned on religious grounds in the United States.

I have myself some question whether the theme itself ought to have been filmed. There are many other themes which can be treated, but this question is independent of the issue of sacrilege and of censorship. Censorship in a democratic community can easily lead to the undermining of democracy. This is particularly true when one religious group seeks to impose its views upon the community as a whole. Such claims deeply affect religious liberty as well. For religious liberty is authentic only in so far as it includes the right of dissent. A revocation by the Board of Regents of a license already approved, and under religious group pressure would, in my judgment, gravely injure both religious and democratic liberty.

For these reasons, I most respectfully urge that the Board of Regents sustain its already given approval of the showing of "The Miracle".

Respectfully, Paul Lehmann, Stephen Colwell, Professor of Applied Christianity, Princeton Theological Seminary.

[fol. 46]

EXHIBIT 26

THE FIRST UNITARIAN CHURCH

Ash Avenue and 149th Street

Flushing, New York City

Solon D. Morgan, Minister

Church Phone: FLushing 3-3860

Residence Phone: BAyside 4-0935

February 1, 1951.

Board of Regents, New York City.

Dear Sirs:

As President of the Liberal Ministers' Club of New York, I am pleased to submit herewith a statement signed by a large number of our members. This statement speaks for itself and I am sure it conveys the sentiments of our entire membership.

We respectfully request that the picture "The Miracle" not be banned for showing in the theaters of New York State.

Sincerely yours, Rev. Solon D. Morgan, President,
Liberal Ministers' Club of New York.

We, members of the Liberal Ministers' Club of New York, believe that the right of a person to decide for himself [fol. 47] whether or not he wishes to view any particular film, whether it is good or bad, religious or sacrilegious, is guaranteed by the American Constitution and is part of our heritage. We believe that man is a free creature, possessed of freedom of will, and that no pressure group has the right to rob him of the opportunity of making choices for himself in such a matter as viewing a motion picture like "The Miracle".

Even if this picture were considered sacrilegious, and opinions will vary as to this, we would not feel that it should be banned. Since there is a wide divergence of opinion as to what is and is not sacrilegious even in religious groups, for anybody, public or private, religious or non-religious, to seek to deprive the public of its right of judgment in the matter is to seek to violate basic civil and religious liberties.

Rev. Maurice Dawkins

Rev. Phillips E. Osgood
 Rev. Howard L. Brooks
 Rev. J. Spencer Kennard
 Rev. Harry Hooper
 Rev. Homer Lewis Sheffer
 Rev. Raymond M. Scott
 Rabbi Albert S. Goldstein
 Rev. John Haynes Holmes
 Rev. DuBois LeFevre
 Rev. Norman D. Fletcher
 Rev. H. Mortimer Gesner, Jr.
 Rev. John Paul Jones
 Rev. Karl M. C. Chworowsky
 Rev. John H. Lathrop
 Rev. Alfred H. Rapp
 Rev. Charles D. Friou
 Henry Neumann, Leader
 Ethical Soc.

Rev. Lon Ray Call
 Rev. Ethelred Brown
 Rev. George G. Howard
 Rev. Clifford H. Vessey
 Rev. Albert Allinger
 Rev. James M. Hutchinson
 Rev. Vincent B. Silliman
 Rev. Herbert H. Stroup
 Rev. Pierre Van Paassen
 [fol. 48] Jerome Nathanson,
 Leader Ethical Society

Albert Herling
 Rev. Charles F. Potter
 Robert Brockway
 Rev. Walter Royal Jones, Jr.
 Rev. Gerald F. Weary
 Rev. Hilary G. Richardson
 Rev. Reginald H. Bass
 Rabbi Julian F. Fieg
 Rev. Donald Harrington
 Rev. Dale DeWitt
 Rev. Solon D. Morgan
 Rev. Maurice Dawkins, Minister of Education, Com-
 munity Church of New York

Rev. Phillips E. Osgood, Minister, First Unitarian Church, Orange, N. J.

Rev. Howard L. Brooks, Asst. Dr., Unitarian Service Committee, New York, N. Y.

Rev. J. Spencer Kennard, Educator, New York City

Rev. Harry Hooper, Minister, Unitarian Church of Staten Island, N. Y.

Rev. Homer Lewis Sheffer, Minister, Unitarian Church of Ridgewood, N. J.

Rev. Raymond M. Scott, Minister, Universalist Church, Bridgeport, Conn.

Rabbi Albert S. Goldstein, Bronx, N. Y.

Rev. John Haynes Holmes, Minister Emeritus, Community Church of New York

Rev. Dubois LeFevre, Unitarian Minister, New Rochelle, N. Y.

Rev. Norman D. Fletcher, Minister, Unitarian Church, Montclair, N. J.

[foot 49] Rev. H. Mortimer Gesner, Jr., Minister, Unitarian Church, Plainfield, N. J.

Rev. John Paul Jones, Minister, Union Church, Bay Ridge, Brooklyn, N. Y.

Rev. Karl M. C. Chworowsky, Minister, Flatbush Unitarian Church, Brooklyn, N. Y.

Jerome Nathanson, Leader, Ethical Culture Society, New York, N. Y.

Albert Herling, secular work, New York

Rev. Charles F. Potter, Minister, First Humanist Society of New York

Robert Brockway, Northport, L. I. Unitarian Fellowship

Rev. Walter Royal Jones, Jr., Minister, Church of the Saviour (Unitarian), Brooklyn, N. Y.

Rev. John H. Lathrop, Minister, Church of the Saviour (Unitarian), Brooklyn, N. Y.

Rev. Alfred H. Rapp, Minister, First Congregational Church, Flushing, N. Y.

Rev. Charles D. Friou, Minister, First Congregational Church, Flushing, N. Y.

Henry Neumann, Leader, Brooklyn Society for Ethical Culture

Rev. Lon Ray Call, Minister-at-Large, American Unitarian Association

Rev. Ethelred Brown, Minister, Harlem Unitarian Church, New York

[fols. 50-62] Rev. George G. Howard, Minister, Unitarian Church of Hackensack, N. J.

Rev. Clifford H. Vessey, Minister, Community Church, White Plains, N. Y.

Rev. Albert Allinger, Minister, Methodist Church, Cranford, N. J.

Rev. James M. Hutchinson, Minister, Unitarian Church, Trenton, N. J.

Rev. Vincent B. Silliman, Minister, Unitarian Church, Hollis, N. Y.

Rev. Herbert H. Stroup, Minister, Unitarian Church, Rutherford, N. J.

Rev. Pierre Van Paassen, Unitarian Minister, New York, N. Y.

Rev. Hilary G. Richardson, Minister Emeritus, Unitarian Church, Yonkers, N. Y.

Rev. Reginald H. Bass, Minister, Central Community Church, Brooklyn, N. Y.

Rabbi Julian F. Fleg, New York, N. Y.

Rev. Gerald F. Weary, Minister, Unitarian Church, Port Washington, L. I.

Rev. Donald Harrington, Minister, Community Church of New York.

Rev. Dale DeWitt, Regional Director, American Unitarian Association, New York, N. Y.

Rev. Solon D. Morgan, Minister, Unitarian Church, Flushing, N. Y.

[fol. 63]

EXHIBIT 34

Princeton University
Princeton New Jersey

Department of Philosophy

January 25, 1951

Dear Mr. London:

I sent the annexed letter today to the New York Times. It is probably too long for quotation by you in full, but you might care to use parts of it.

Yours very truly, W. T. Stace.

wts:f

January 25, 1951

Editor, New York Times, New York, New York.

Dear Sir:

Attempted impartial analysis of the issues regarding the controversial film *The Miracle* seems to me to yield the following results.

(1.) *Is it blasphemous or sacriligious?* No story, considered simply as a narration of facts about the actions of human beings, can be in itself blasphemous or immoral. The blasphemy or immorality, if it exists will always lie in some interpretation suggested by the way in which the story is told. For instance, murder is immoral. But a story relating the facts of a murder is not an immoral story. [fol. 64] It may become so, however, if it is told in such a way as to condone, or incite to murder. *The Miracle* tells the story of a pious but half-witted woman who becomes pregnant by a man whom she believes to be St. Joseph, and who then imagines herself to be the Virgin Mary. Since this is a possible human fact, to relate it cannot be sacriligious in itself. The only possible question concerns the interpretation suggested by the manner of presentation. If the film were intended to cause people to scorn or ridicule the doctrine of the Virgin Birth, or to disbelieve it, it could reasonably be called sacriligious from the point of view of an orthodox Christian. But there is no hint of any such suggestion the film. Its plain interpretation or lesson

is to show with what brutality and inhuman lack of feeling well-meaning, but thoughtless folk may treat a poor demented woman who has religious hallucinations. It excites in the audience sympathy for the unfortunate woman and some indignation against the callousness of her neighbors. This cannot possibly be sacrilegious, and is on the contrary a highly moral lesson.

(2.) *Should it be censored?* Plainly not, if the above interpretation is correct. But suppose we assume that it is an attempt to cast aspersions on Christian beliefs. Should it then be censored? The argument often used is that a minority, such as the Catholics in America, has no right to suppress what offends it or to enforce its views on the majority. This is the wrong argument. The democratic principle of freedom of expression is rather that even a majority has no right to suppress what offends it and [fols. 65-89] enforce its views on minorities. Otherwise no minority view would ever have any chance of expression. For instance, the Protestant majority in this country ought not to suppress a Catholic film which in some way offended Protestant principles. A lecture urging atheism is admittedly protected by our principle of freedom of speech. The same principle should apply to an anti-religious film, though of course I deny that *The Miracle* is anti-religious. The only proper grounds for censorship are if a public exhibition might be expected to lead to a breach of the peace, or if it has a direct tendency to produce dangerously immoral activities in the audience, as for instance the exhibition of extreme sexual lewdness on the stage might do. *The Miracle* has no tendency of the latter kind, and if Catholics should urge that it might lead to a breach of the peace, they would condemn themselves, since certainly no non-Catholic is going to proceed to violence.

Yours faithfully, W. T. Stace, Professor of Philosophy.

[fol. 90]

EXHIBIT 53-A

(Herald Tribune, Tuesday, January 30, 1951)

"The Miracle"

Catholic Layman Protests Ban on Film

To the New York Herald Tribune:

There is in the current issue of the "Magazine of Art" an editorial contributed by a distinguished Catholic layman, Mr. Otto L. Spaeth, which I should like to call to the attention of your readers. It protests the recent action of New York City's License Commissioner, Edward T. McCaffrey banning from further showing the film "The Miracle." The essential paragraphs of his argument are as follows:

"The Miracle" is either a thing of blasphemy or a thing of beauty. It is either an insult to the church or it is a magnificently moving and profound religious work of art.

At the outbreak of the controversy, I immediately arranged for a private showing of the film. I invited a group of Catholics, competent and respected for their writings on both religious and cultural subjects. The essential approval of the film was unanimous.

There was, indeed, "blasphemy" in the picture—but it was the blasphemy of the villagers, who stopped at nothing, not even the mock singing of a hymn to the Virgin, in their brutal badgering of the tragic woman. The scathing indictment of their evil behavior, implicit in the film, was seemingly overlooked by its critics.

[fols. 91-95] There are great sections of the adult American public entitled and equipped to make the decision that the commissioner attempted to reserve for himself. Neither opinion of the film should color one's view of the commissioner's action. I would oppose it even if I happened to share his views. Of course, I would not favor showing "The Miracle" as a popcorn contretemps on a double bill with an Esther Williams submarine spectacle. But the film appeared in an art theater catering to adult audiences. That is its proper place.

The most regrettable side of this controversy is that "The Miracle" now lends itself to the kind of exploitation that attended display of manicured versions of salacious baubles like "The Outlaw." The commissioner's action can only help to insure his original forebodings, which would otherwise never have come to pass.

It should be added that Mr. Spaeth, now director of the American Federation of Arts, is also past president of the Liturgical Arts Society, a Catholic organization, and served as a delegate to the First International Congress of Catholic Artists, held in Rome last September.

I submit these statements by a prominent churchman for the light they may shed upon his church's attitude toward the issues which are coming before the Motion Picture Division of the New York State Board of Regents at Albany next week.

Alfred H. Barr, Jr.

New York, Jan. 27, 1951.

[fols. 96-149]

EXHIBIT 53-E

TRafalgar 4-0012-0013

Bernard J. Bamberger, D. D.

Rabbi

West End Synagogue

Congregation Shaaray Tefila

One Sixty West Eighty Second Street

New York 24, N. Y.

February 1, 1951.

The Board of Regents,
University of the State of New York,
Albany, New York.

GENTLEMEN:

Regarding the motion picture, "The Miracle", I wish to endorse vigorously the statement by Mr. Allen Tate published in the New York Times today, February 1.

Some censorship of films is no doubt necessary, but it should be limited to the indispensable minimum. It is justified when it limits matter that endangers public order, safety, or morality. I have seen "The Miracle," and find in it no threat to the general welfare. Whether it is sacrilegious can be decided only in terms of a specific theology. For the state to intervene in determining such a question, on which men of the highest integrity and piety disagree, is not only a violation of constitutional principles, but a serious threat to the independence of all religious agencies.

I hope that your body will not take any action to suppress this film.

Respectfully yours, Bernard J. Bamberger, Rabbi.
BJB/b.

[fol. 150]

EXHIBIT 75

(Washington, D. C. Post, Dec. 31, 1950)

Licensing Films

New York, in certain respects the most provincial of American cities, has just suffered another attack of official censorship intended to protect its citizens from the corruptive influence of art. The censored subject on this occasion is a motion picture titled "The Miracle," one of a trio of imported films called "Ways of Love" which on Wednesday was voted the best foreign-language program of the year by the New York film critics. "The Miracle" deals with religious passion in a way which City License Commissioner Edward T. McCaffrey considers a "blasphemous affront to a great many of our fellow citizens."

Mr. McCaffrey, having the power to do so, banned the film forthwith. This keeps it from being seen not only by those who might agree with his view of it but also by those who might reasonably consider it an affront to have their choice of motion picture entertainment determined by a license commissioner. It has not been suggested that this film is in any way obscene or detrimental to the morals of the young; indeed, it had previously run the censorship gantlet of the United States Customs, the New York State Board of Censors and the National Board of Review—the

last of which, incidentally, labeled it "approved and highly recommended."

The merits of the picture are, however, beside the point. Many books, plays, films and other works of art are likely to prove offensive to some segments of the public. "The Miracle" may be among them, although it was chosen for [fol. 151] the Venice Film Festival in Italy, a devoutly religious country, and has been seen, according to its American producer, by 25,000 persons in New York without any protest whatever. But in any case no one is obliged to go to see it. Enough is now known about its content to warn those whose sensibilities might be distressed by it, and other New Yorkers ought to be free to take it or leave it as they choose. This freedom of choice, which is the essence of a free society, has now been destroyed—we hope only temporarily—by the caprice of a single official.

EXHIBIT 76

(Boston-Herald, 1-2-51)

Film Censorship

The censorship by a New York license commissioner of the Italian film "The Miracle" was made to look peculiarly ridiculous by the almost simultaneous finding by the New York film critics that it was the best foreign language film of the year. But it took a New York Supreme Court justice to induce the commissioner to revoke the ban.

The New York censor had objected to the film on the ground that it was "officially and personally blasphemous." It portrays an idiot woman who is seduced by a man she believes to be St. Joseph. This is admittedly a delicate theme, but the picture has been viewed by thousands of sensitive and responsible people who found in it no offense. Indeed, as an entry in the Venice Film Festival it was passed upon by an official representative of the Vatican. [fol. 152] The blasphemy charge, therefore, appears to be quite absurd.

In fact, however, neither the demonstrably high artistic quality of the film nor its apparent blamelessness on the

score of religious propriety is completely relevant. If it had been a poor film and a tasteless one, the license commissioner would have been overstepping his authority in banning it. The New York critics rightly stated that the act was "symptomatic of a growing tendency toward dangerous censorship of the content of films."

The United States Supreme Court is expected to hold shortly, although it has not heretofore, that moving pictures are covered by the free speech clause of the First Amendment. They have become an important medium of expression, and as such, in our tradition, they should be protected from the arbitrary censorship of individuals.

It is highly desirable that the movie industry continue to police itself. The medium is powerful and subject to abuse. It is perfectly proper that private groups, representing religious and other interests, should review moving pictures and publish their ratings for the guidance of those who wish it. But official censorship is quite another thing and jeopardizes our intellectual freedom. Let the producer be answerable in court for any violation of law in his presentation, but let no official prejudge the case in camera.

Morris Ernst has wisely stated that, "if ideas are unwholesome, the human race must some day become adult enough to appraise, to accept, to reject." No democracy ever grew to maturity on ideological spoon-feeding. The censor has no democratic function.

[fol. 153] IN COURT OF APPEALS OF NEW YORK

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 18th day of October in the year of our Lord one thousand nine hundred and fifty-one, before the Judges of said Court.

Witness, The Hon. John T. Loughran, Chief Judge, Presiding, Raymond J. Cannon, Clerk.

Remittitur October 19, 1951.

[fol. 154] In the Matter of the Application of JOSEPH
BURSTYN, INC., Appellant,
For an Order &c.,

ag'st.

LEWIS A. WILSON, Commissioner of Education of the State
of New York, & ors., as Regents of the University of the
State of New York, Respondents

Be It Remembered, That on the 29th day of May in
the year of our Lord one thousand nine hundred and fifty-
one, Joseph Burstyn, Inc., the appellant in this cause, came
here unto the Court of Appeals, by Ephraim S. London, its
attorney, and filed in the said Court a Notice of Appeal
and return thereto from the order of the Appellate Divi-
sion of the Supreme Court in and for the Third Judicial
Department. And Lewis A. Wilson, Commissioner of Edu-
cation of the State of New York, & ors., as Regents of
the University of the State of New York, the respondents
in said cause, afterwards appeared in said Court of Appeals
by Charles A. Brind, Jr., their attorney.

Which said Notice of Appeal and the return thereto, filed
as aforesaid, are hereunto annexed.

[fol. 155] Whereupon, The said Court of Appeals having
heard this cause argued by Mr. Ephraim S. London, of
counsel for the appellant, and by Mr. Charles A. Brind,
Jr., of counsel for the respondents, briefs filed by amici
curiae, and after due deliberation had thereon, did order
and adjudge that the order of the Appellate Division of
the Supreme Court appealed from herein be and the same
hereby is affirmed, with costs.

And it was also further ordered, that the records afore-
said, and the proceedings in this Court, be remitted to the
said Supreme Court, there to be proceeded upon according
to law.

[fol. 156] Therefore, it is considered that the said order
be affirmed, with costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return
thereto aforesaid as the judgment of the Court of Appeals
aforesaid, by it given in the premises, are by the said Court
of Appeals remitted into the Supreme Court of the State
of New York before the Justices thereof, according to the

form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

Raymond J. Cannon, Clerk of the Court of Appeals
of the State of New York.

Court of Appeals, Clerk's Office, Albany, October 19,
1951.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

Raymond J. Cannon, Clerk. (Seal.)

[fol. 157] IN SUPREME COURT OF NEW YORK

[Title omitted]

JUDGMENT OF THE SUPREME COURT ON REMITTITUR—November 23, 1951

The above named petitioner-appellant having appealed to the Court of Appeals of the State of New York from the order of the Appellate Division of this court, Third Department, entered in the office of the Clerk of the County of Albany on the 15th day of May, 1951, unanimously confirming the determination of the respondents together with Fifty (\$50.00) Dollars costs and disbursements, the said proceeding having been commenced by the service of an order to show course dated February 16, 1951, and transferred for a disposition to the Appellate Division of this court, Third Department, and from each and every part of said order of confirmance, as well as from the whole thereof; and the said appeal having been duly argued in the said Court of Appeals, and after due deliberation the Court of [fol. 158] Appeals having ordered and adjudged that the order of the Appellate Division of the Supreme Court appealed from herein be affirmed, with costs, and having fur-

ther ordered that the proceedings therein be remitted to this Court and to be proceeded upon according to law; and the remittitur from the said Court of Appeals having been filed herein,

Now, on motion of Charles A. Brind, Jr., Attorney for respondents herein, it is

Ordered, that the order of the said Court of Appeals be and the same hereby is made the order of this court; and that the order entered in the office of the Clerk of the County of Albany on the 15th day of May, 1951, be, and the same hereby is, affirmed with costs.

Enter

Kenneth S. McCaffery, J. S. C.

[fols. 159-161] Sir:

Please take notice that the foregoing is a true copy of an order duly made in the above entitled matter and duly entered and filed in the office of the Clerk of the County of Albany, on the 23rd day of November, 1951.

Dated, Albany, N. Y., November 28, 1951.

Charles A. Brind, Jr., Attorney for Respondents,
Office & P. O. Address: State Education Building,
Albany, N. Y.

To Ephraim S. London, Attorney for Petitioner-Appellant, 150 Broadway, New York City. O'Connor and Farber, Attorneys for Petitioner, 120 Broadway, New York City. Samuel E. Aronowitz, of Counsel, 100 State Street, Albany, New York.

[fol. 162] IN COURT OF APPEALS OF NEW YORK

OPINION OF COURT OF APPEALS, CONCURRING OPINION, AND
DISSENTING OPINION

FROESSEL, J.:

A license for the exhibition of a motion picture film entitled "The Miracle" together with two other films, described in their combination as a trilogy and called "Ways of Love," was issued to petitioner on November 30, 1950, by the motion picture division of the Department of Educa-

tion of the State of New York, under the governing statute (Education Law, art. 3, part II). "The Miracle" was produced in Italy as "Il Miracolo," and English subtitles were later added. A prior license had been issued to the original owner of the distribution rights for exhibition, with Italian subtitles alone, but the film was never shown under that license.

The first public exhibition of "The Miracle" as part of the trilogy, "Ways of Love," was shown in New York City on December 12, 1950. It provoked an immediate and substantial public controversy, and the Education Department was fairly flooded with protests against its exhibition. Others expressed a contrary view. In consequence thereof, the Board of Regents of the University of the State of New York (hereinafter called the Regents) proceeded promptly to review the action of its motion picture division. It appointed a subcommittee, and directed a hearing requiring petitioner to show cause why the licenses should not be rescinded and cancelled.

[fol. 163] After viewing the film and giving petitioner an opportunity to be heard, its subcommittee reported that there was basis for the claim that the picture is sacrilegious, and recommended that the regents view the film. Petitioner declined to participate in the hearing other than to appear specially before the subcommittee for the purpose of challenging the jurisdiction of the Regents to cancel the licenses, but its sole stockholder, Joseph Burstyn, appeared as an individual and filed a brief.

Thereupon and on February 16, 1951, after reviewing the picture and the entire record, the Regents unanimously adopted a resolution rescinding and canceling the licenses upon their determination that "The Miracle" is sacrilegious, and not entitled to a license under the law. Thereafter petitioner instituted the present Article 78 proceeding to review that determination, and now urges that (1) the Regents were powerless to review the action of its motion picture division or to revoke the licenses; (2) the word "sacrilegious" does not provide a sufficiently definite standard for action; (3) the Regents exceeded their authority; (4) the statute is unconstitutional as in violation of the First and Fourteenth Amendments of the Constitu-

tion of the United States in that denial or revocation of a license on account of sacrilege interferes with religious liberty and breaches the wall between church and state; and (5) the statute is unconstitutional *in toto* as a prior restraint on the right of free speech guaranteed by the First and Fourteenth Amendments of the Federal Constitution. The Appellate Division unanimously confirmed the determination of the Regents.

First: The principal argument advanced by petitioner is directed toward the claim that the Regents have no power under the statute to rescind a license once issued by the motion picture division, unless upon a charge of fraud in the procurement thereof or subsequent misconduct by the [fol. 164] licensee. Any other construction of the statute, it is said, would be inequitable to petitioner, which has spent money relying upon the license as issued. The Regents, on the other hand, contend that they were empowered under the Education Law and our State Constitution to make the determination here challenged.

This issue, then, is one primarily of statutory construction, turning upon the intention of the Legislature as found in the language of the statutes. It is resolved by the answer to the question: Did the Legislature intend that the granting of a license by a subordinate official of the State Education Department should be a determination final and irrevocable, binding on the head of his department, the courts and the public for all time? As we said in *Matter of Equitable Trust Co. v. Hamilton* (226 N. Y. 241, 245) "That is in every case a question dependent for its answer upon the scheme of the statute by which power is conferred."

In considering the statute pattern conferring the power, we should note the framework of fact and circumstance in which the statutes are to be examined, and particularly the nature of the problem with which we are dealing. Motion pictures, by their very nature, present a unique problem. They are primarily entertainment, rather than the expression of ideas, and are engaged in for profit (*Mutual Film Corp. v. Industrial Commission of Ohio*, two cases, 236 U. S. 230, 247; *Mutual Film Corp. v. Hodges*, 236 U. S. 248). They have universal appeal to literate and illiterate, young and old, of all classes. They may exercise influence for

good, but their potentiality for evil, especially among the young, is boundless. As was said in *Pathe Exchange, Inc. v. Cobb* (202 App. Div. 450, 457, affd. 235 N. Y. 539), where we sustained the original statute (L. 1921, ch. 715) creating the "motion picture commission," in respect to current events films: " * * * many would cast discretion and self-control to the winds, without restraint, social or moral. There are those who would give unrestrained rein to passion. * * * They appreciate the business advantage of depicting the evil and voluptuous thing with the poisonous charm." A public showing of an obscene, indecent, immoral or sacrilegious film may do incalculable harm, and the State, in making provision against the threat of such harm (Education Law, sec. 122), may afford protection as broad as the danger presented.

We are thus concerned with a valid exercise of the police power (*Mutual Film* cases, *supra*; annotation 64 A. L. R. 505, and cases therein cited; *Pathe Exchange, Inc. v. Cobb*, *supra*) and with rights acquired by licensees thereunder. Such rights are not contractual in the constitutional sense (*People ex rel. Lodes v. Dept. of Health, etc.*, 189 N. Y. 187; 12 Am. Jur., Constitutional Law, sec. 405; 33 Am. Jur., Licenses, secs. 21, 65). This is the general rule notwithstanding the expenditure of money by a licensee in reliance upon the license, although there is authority to the contrary in the case of building permits (33 Am. Jur., Licenses, sec. 21; *People ex rel. Lodes v. Department of Health, etc.*, *supra*, distinguishing at p. 196, *City of Buffalo v. Chadayne*, 134 N. Y. 163). Moreover, rights gained under the statute are accepted with whatever conditions or reservations the statute may attach to them. With these precepts in mind, and in the light of the problem with which the Legislature dealt, we may properly turn to a consideration of the statutory scheme.

The original body for the licensing of motion pictures for exhibition in this State was an independent commission created by chapter 715 of the Laws of 1921, its members appointed by the Governor, by and with the advice and consent of the Senate. While the provisions for licensing were similar to those now in the Education Law, there was an essential difference in the scheme embodied therein

due to the *independent* nature of the former commission, which was then expressly given all of the powers now granted to the Regents. In 1926, the functions of the motion picture commission were transferred to the Department of Education and the old commission was abolished [Vol. 166] (L. 1926, ch. 544; State Departments Law, sec. 312). In 1927, the present form of the statute was incorporated into the Education Law as article 43 thereof (L. 1927, ch. 153, secs. 28, 29). These changes were significant, as will presently more fully appear.

The Regents are a constitutional body, existing since 1784 (N. Y. Const., art. XI, sec. 2). They are named as head of the education department in the same paragraph as are the three chief elective officers of the State, the Governor, Comptroller and Attorney-General (art. V, sec. 4). The latter provision of our Constitution empowers the Regents to "appoint and at their pleasure remove a commissioner of education to be the chief administrative officer of the department." The mere placing of the motion picture commission in the department of education indicates an intention that the Regents should henceforth exercise complete authority over that agency.

Moreover, by explicit language, the Legislature gave to the Regents as head of the education department all of the broad powers of control and supervision formerly possessed by the independent commission, leaving to the motion picture division only "the administrative work" of licensing (Education Law, secs. 101, 103, 132). Thus, by section 101, of the Education Law, the education department "is charged" with "the exercise of all the functions" of the department, and with "the performance of all" the "powers and duties" transferred from the former independent motion picture division, "whether in terms vested in such department" or in any "*division*" thereof. (Emphasis supplied.) And such performance is authorized "by or through" the appropriate officer or division; by the same section the Regents are continued as "the head of the department," as prescribed in the Constitution. The Regents appoint the director, officers and employees of the motion picture division, fix their compensation, assign duties to the division, establish local offices, and "prescribe the powers

[fol. 167] and duties" (Education Law, secs. 120, 121). The "form, manner and substance" of license applications are prescribed by the education department, and not by the motion picture division (Education Law, sec. 127).

The Regents must review the *denial* of a license before an unsuccessful applicant, who is given a "right of review by the regents," can avail himself of an article 78 proceeding (Education Law, sec. 124). A corresponding right of review where a license was *issued* must be deemed implicit in the broad powers of the board, rendering needless any additional language by way of express grant; when the Legislature intends to withhold the power of review from the head of a department with respect to the finding of an agency of the department, it does so by express language (Labor Law, Labor Relations, sec. 702, subd. 9; Workmen's Compensation Law, sec. 142, subd. 4). Finally, the Regents "have *authority* to enforce the *provisions and purposes*" of the statute and to make rules and regulations in "carrying out the enforcing (its) *purposes*" (Education Law, sec. 132; emphasis supplied). This latter provision is taken directly from the original statute (sec. 15), and, although not embraced in the 1926 enactment transferring functions of the independent motion picture commission, this precise authority was expressly given to the Regents by the 1927 amendment (former sec. 1092 of the Education Law). The power to enforce enforces the power to correct the action of a subordinate, and one of the specific provisions and purposes of the act is that no sacrilegious films be licensed.

From all of this it is clear that the motion picture division is subject and subordinate to the education department and the Regents, and is not independent thereof (*cf. Butterworth v. United States*, 112 U. S. 50, in which an altogether different statute pattern was involved, and where an appeal was expressly authorized from the commissioner [fol. 168] to the court, either directly or by means of an original suit in equity). Even such functions as may now be exercised by the director of the division under the statute may be exercised by other officials upon authorization by the Regents (Education Laws, secs. 120, 122). Without question, then, the statute constitutes the Regents the main-spring of the entire system therein set up. To deny them

the power to correct the action of a subordinate, when the ultimate responsibility rests upon them, would be to set at naught the whole elaborate plan established by the Legislature. Such power is "essential to the exercise" of the powers expressly granted (*Lawrence Constr. Corp. v. State of New York*, 293 N. Y. 634, 639).

If petitioner's interpretation of the Education Law were to be adopted, no review either of an administrative or supervisory nature, or through the civil or criminal courts (see Penal Law; sec. 1141, as amended by L. 1950, ch. 624; *Hughes Tool Co. v. Fielding*, 188 Misc. 942, affd. 272 App. Div. 1048, affd. 297 N. Y. 1024), of the action of a subordinate granting a license in the first instance as provided by the Legislature. Thus, the most indecent, obscene, immoral, sacrilegious or depraved presentation might be made through the medium of motion picture film, provided only there was some slip, inadvertence or mistake on the part of the reviewer, leaving his superiors, the courts, and the public generally powerless to correct the situation. It would simply mean that this statutory plan to protect the public from films forbidden to be licensed for general exhibition under section 122 rests entirely upon the judgment of one or two persons in the motion picture division, whose favorable determination in the first instance is irrevocably binding on the People of the State of New York. Such intention on the part of the Legislature would seem to be so utterly unreasonable and out of harmony with basic public policy in these matters as to be unthinkable (*People v. Ahearn*, 196 N. Y. 221, 227).

[fol. 169] On the other hand, the only reasonable view to be taken is that the Legislature deemed the Constitution and the Education Law vested in the Regents as an independent constitutional body such supervisory powers as sufficiently to protect the public interest against improper action by subordinates, and that the authority thereby granted is therefore sufficiently complete in itself to accomplish the salutary purposes envisioned therein. Once the Legislature placed the power to license in the department of education, the Constitution (art. V, sec. 4) mandated the Board of Regents as its head to exercise it, and there is no legislation even purporting to restrict them

from doing so. They are authorized to employ subordinates and to function "by or through them," but are not thereby divested of their own ultimate responsibility. The action of the motion picture division must thus be regarded as reviewable by the Regents in any case—where the license is refused, on demand of the applicant; where the license is granted, on the Regents' own motion.

Accordingly, we are of the opinion that the Regents have power to review the action of its motion picture division in granting a license to exhibit motion pictures, and rightfully exercised its jurisdiction in this case.

Second: To the claim that the statute delegates legislative power without adequate standards, a short answer may be made. Section 122 of the Education Law provides that a license shall be issued for the exhibition of a submitted film, "unless such film or a part thereof is obscene, indecent, immoral, inhuman, sacrilegious, or is of such a character that its exhibition would tend to corrupt morals or incite to crime." Only the word "sacrilegious" is attacked for indefiniteness. The dictionary, however, furnishes a clear definition thereof, were it necessary to seek one, as, e. g., "the act of violating or profaning anything sacred" (Funk & Wagnall's New Standard Dictionary, 1937). There is no difficulty in recognizing the limits of the [fol. 170] criterion thus established, and the courts have had no problem either with the word "sacrilegious" or with its synonym, "profane."

In *Mutual Film Corp. v. Hodges* (236 U. S. 248, *supra*), the contention that there was an invalid delegation of legislative power was rejected where the statute provided that the censor should approve such films as were found to be "moral and proper, and disapprove such as are *sacrilegious*, obscene, indecent, or immoral, or such as tend to corrupt the morals" (emphasis supplied). In *Winters v. New York* (333 U. S. 507, 510) it is stated that publications are "subject to control if they are lewd, indecent, obscene or *profane*" (emphasis supplied). In *Chaplinsky v. New Hampshire* (315 U. S. 568, 571-572) Mr. Justice Murphy declared for a unanimous court: "There are certain well-defined and narrowly limited classes of speech, the *prevention* and punishment of which have never been thought to

raise any Constitutional problem. These include the lewd and obscene, the *profane* * * * (emphasis supplied). Indeed, Congress itself has found in the word "profane" a useful standard for both administrative and criminal sanctions against those uttering profane language or meaning by means of radio (*Allen B. Dumont Laboratories v. Carroll*, 184 F. 2d 153, 156, certiorari denied 340 U. S. 929; U. S. Code, tit. 47, Annotated, sec. 303, in, D; U. S. Code, tit. 18, Annotated, sec. 1464; see, also, Penal Law, sec. 2072).

Accordingly, the claim that the word "sacrilegious" does not provide a sufficiently definite standard may be passed without further consideration, since it is without substance.

Third: We turn now to the contention that the Regents exceeded their powers.

Petitioner urges that, even if the board had the power, there was no justification for revocation. Of course, as the Appellate Division below, in its opinion, said: "Under the familiar rule, applicable to all administrative proceedings [fol. 171] ings, we may not interfere unless the determination made was one that no reasonable mind could reach." This rule applies to the courts and not to administrative agencies, as the Regents. (*Matter of Foy Productions, Ltd. v. Graves*, 253 App. Div. 475, affd. 278 N. Y. 498.)

We have all viewed the film in question. The so-called exhibits, which are simply unsworn communications expressing personal opinions, are of little help to us. The principal basis for the charge of sacrilege is found in the picture itself, the personalities involved, the use of scriptural passages as a background for the portrayal of the characters, and their actions, together with other portions of the script and the title of the film itself. It is featured as a "way of love." At the very outset, we are given this definition: "ardent affection, passionate attachment, men's adoration of God, sexual passion, gratification, devotion."

While the film in question is called "The Miracle," no miracle is shown; on the contrary, we have the picture of a demented peasant girl meeting a complete stranger whom she addresses as "Saint Joseph". At the very beginning of the script, reference is made to "Jesus, Joseph, Mary". "Saint Joseph" first causes her to become intoxicated. Scriptural passages referring to the Holy Sacrament (Luke

22:19), and to the nativity of Christ (Matt. 1:20), are freely employed immediately after she states she is not well. A blackout in the film, in its association with the story, compels the inference that sexual intercourse and conception ensue. "Saint Joseph" abandons her immediately following the seduction, she is later found pregnant, and a mock religious procession is staged in her honor; she is "crowned" with an old washbasin, is thrown out by her former lover, and the picture concludes with a realistic portrayal of her labor pains and the birth in a church courtyard of her child, whom she addresses as "my blessed son", "My holy son".

[fol. 172] Christ is the heart and core of the Christian faith. Two personalities most closely related to Him in life were His mother, Mary, and Joseph. They are deeply revered by all Christians. Countless millions, over the centuries have regarded their relationship as sacred, and so do millions living today. "The Miracle" not only encroaches upon this sacred relationship and the Biblical presentation thereof in respect to the birth of Christ, but utterly destroys it, associating it, as the Regents found, "with drunkenness, seduction, mockery and lewdness", and, in the language of the script itself, "with passionate attachment, sexual passion and gratification", as a way of love.

In the light of the foregoing, we conclude, as did the Appellate Division, that we cannot say that the determination complained of "was one that no reasonable mind could reach"; and that the board did not act arbitrarily or capriciously.

Fourth: It is further urged that a license may not be denied or revoked on the ground of sacrilege, because that would require a religious judgment on the part of the censoring authority and thus constitute an interference in religious matters by the State. In this connection, it is also urged that freedom of religion is thereby denied, since one man's sacrilege is another man's dogma, and one may thus be prevented from propagating his own religious views by means of motion pictures. The latter argument is specious when applied to motion pictures offered to the public for general exhibition as a form of entertainment, as we shall hereafter point out. Religious presentations, as ordinarily

understood, as well as other educational and scientific films, are exempt (Education Law, sec. 123). Thus freedom of religion is not impaired in the slightest, as anyone may express any religious or anti-religious sentiment he chooses through a proper use of the films.

Nor is it true that the Regents must form religious [fol. 173] judgments in order to find that a film is sacrilegious. As hereinbefore indicated, there is nothing mysterious about the standard to be applied. It is simply this: that no religion, as that word is understood by the ordinary, reasonable person, shall be treated with contempt, mockery, scorn and ridicule to the extent that it has been here, by those engaged in selling entertainment by way of motion pictures. As the court below said of the statute in question, "All it purports to do is to bar a visual caricature of religious beliefs held sacred by one sect or another, and such a bar, in our opinion, is not a denial of religious freedom."

Although it is claimed that the law benefits all religions and thus breaches the wall of separation between church and state, the fact that some benefit may incidentally accrue to religion is immaterial from the constitutional point of view if the statute has for its purpose a legitimate objective within the scope of the police power of the State (*Everson v. Board of Education*, 330 U. S. 1; *Cochran v. Louisiana State Board*, 281 U. S. 370; *Bradfield v. Roberts*, 175 U. S. 291; *People v. Friedman*, 302 N. Y. 75, appeal dismissed for want of substantial Federal question 341 U. S. 907). Cases such as *People ex rel. McCollum* (333 U. S. 203) and *Cantwell v. Connecticut* (310 U. S. 296) are not to the contrary. The former case dealt with the use of state property for religious purposes (*Zorach v. Clauson*, 302, N. Y. —), while the latter held (p. 305) that "a censorship of religion as the means of determining its right to survival is a denial of liberty protected by the" First and Fourteenth Amendments. Yet even in those cases it was recognized that the States may validly regulate the manner of expressing religious views if the regulation bears reasonable relation to the public welfare. Freedom to believe—or not to believe—is absolute; freedom to act is not. "Conduct remains subject to regulation for the protection of society" (*Cantwell*

v. *Connecticut*, *supra*, at p. 304; *American Communications* [fol. 174] *Assn. v. Douds*, 339 U. S. 382, 393).

The statute now before us is clearly directed to the promotion of the public welfare, morals, public peace and order. These are the traditionally recognized objects of the exercise of police power. For this reason, any incidental benefit conferred upon religion is not sufficient to render this statute unconstitutional. There is here no regulation of religion, nor restriction thereof or other interference with religious beliefs except insofar as the picture itself does so, nor is there any establishment of religion or preference of religion or use of state property or funds in aid of religion. There is nothing more than a denial of the claimed right to hurl insults at the deepest and sincerest religious beliefs of others through the medium of a commercial entertainment spectacle.

We are essentially a religious nation (*Church of the Holy Trinity v. United States*, 143 U. S. 457, 465), of which it is well to be reminded now and then, and in the *McCullum* case (*supra*) the Supreme Court paused to note that a manifestation of governmental hostility to religion or religious teachings "would be at war with our national tradition" (at p. 211). The preamble to our State Constitution expresses our gratitude as a people to Almighty God for our freedom. To say that government may not intervene to protect religious beliefs from purely private or commercial attacks or persecution, whatever the underlying motive, and however skillfully accomplished, as distinguished from the assertion of conflicting beliefs, is to deny not only its power to keep the peace, but also the very right to "the free exercise" of religion, guaranteed by the First Amendment. The offering of public gratuitous insult to recognize religious beliefs by means of commercial motion pictures is not only offensive to decency and morals, but constitutes in itself an infringement of the freedom of others to worship and believe as they choose. Insult, mockery, contempt and [fol. 175] ridicule can be a deadly form of persecution—often far more so than more direct forms of action. The prohibition of such conduct comes within the legitimate sphere of State action, and this State has recognized this

principle, not only in the Education Law but in other respects as well (see, e. g., Penal Law, art. 186; Civil Rights Law, art. 4). We are not aware that this power has ever been even implicitly denied to the States.

This nation is a land of religious freedom; it would be strange indeed if our Constitution, intended to protect that freedom, were construed as an instrument to uphold those who publicly and sacrilegiously ridicule and lampoon the most sacred beliefs of any religious denomination to provide amusement and for commercial gain.

For the foregoing reasons, we conclude that the challenged portion of the statute in no way violates the provisions of the First Amendment relating to religious freedom.

Fifth: Petitioner finally argues that the statute is unconstitutional *in toto*; that motion pictures are to be treated as the press generally, and may not be subjected to censorship or prior restraint. While it may not be heard in this respect, inasmuch as it has sought and obtained benefits under the statute, and even now seeks to retain the licenses granted (*Fahey v. Mallonee*, 332 U. S. 245, 255; *Shepherd v. Mount Vernon Trust Co.*, 269 N. Y. 234, 244-247), we shall dispose of this argument upon the merits.

The contention urged is made in the face of direct holdings to the contrary (*Mutual Film cases, supra*; *RD-DR Corp. v. Smith*, 183 F. 2d 562, cert. den. 340 U. S. 853; *Pathe Exchange, Inc. v. Cobb*, 202 App. Div. 450, affd. 236 N. Y. 539; 64 A. L. R. 505).

The rationale of these decisions is that motion pictures [fol. 176] are primarily a form of entertainment, a spectacle or show, and not such vehicles of thought as to bring them within the press of the country. On this basis, petitioner's contention that the *Mutual* cases lack authority today, because it was not the Federal Constitution against which the statute was there tested, is unsound, for the Ohio Constitution guarantees free speech and a free press as does the Federal Constitution. Essentially, what petitioner would have us do is to predict that the Supreme Court will overrule the *Mutual* cases and so disregard them here, as well as our own holding in the *Pathe* case. But such was the position squarely taken in the *RD-DR* case, where the same arguments were presented as are here urged, and they were unequivocally rejected.

On the same footing is the contention that technical developments have made a difference in the essential nature of motion pictures since the *Mutual* decisions. Such development was foreseen in the *Mutual* cases (see p. 242), and was realized at the time of the *RD-DR* case (p. 565), decided a year ago. We have already pointed out that scientific and educational films, among others of kindred nature, are not within the general licensing statute, and are thus not concerned with any problem that might be raised by an attempt to impose general censorship upon such films.

Some comfort is found by petitioner in a statement in *United States v. Paramount Pictures, Inc.* (334 U. S. 131, 166) to the effect that "moving pictures, like newspapers and radio, are included in the press". That was an anti-trust case, freedom of the press was not involved, and the statement was pure dictum. Moreover, it may be observed that when certiorari was sought in the *RD-DR* case, it was denied by the same court; the only Justice voting to grant was the one who wrote that dictum. Were we to rely upon dictum, the concurring remarks of Mr. Justice Frankfurter in a subsequently decided free speech case (*Kovacs v. [fol. 177] Cooper*, 336 U. S. 77, at p. 96), would be appropriate: "Movies have created problems not presented by the circulation of books, pamphlets, or newspapers, and so the movies have been constitutionally regulated." (Citing the *Mutual* cases.) However, dictum is a fragile bark in which to sail the constitutional seas.

The fact is that motion pictures do create problems not presented by other media of communication, visual or otherwise, as already indicated. It should be emphasized, however, that technical developments which increase the force of impact of motion pictures simply render the problem more acute. It does not avail to argue that there is now greater ability of transmission, when it is precisely that ability which multiplies the dangers already inherent in the particular form of expression.

Whether motion pictures are *sui generis* or a very special classification of the press becomes a question for the academicians, once it is recognized that there is a danger presented and met by legislation appropriate to protect the public safety, yet narrow enough as not otherwise to limit

freedom of expression. If there is any one proposition for which the free speech cases may be cited from *Schenck v. United States* (249 U. S. 47) to *Dennis v. United States*, and *Breard v. Alexandria*, decided June 4, 1951, it is that freedom of speech is not absolute, but may be limited when the appropriate occasion arises. We are satisfied that the dangers present and foreseen at the time of the *Mutual Film* cases are just as real today.

The order of the Appellate Division should be affirmed, with costs.

[fol. 178] DESMOND, J. (concurring). I concur for affirmation for these reasons: 1. It is not too clear from the statutes, that the Legislature, transferring (by L. 1926, ch. 544) motion picture licensing from an independent State Motion Picture Commission to a new motion picture division in the State Department of Education intended, without so saying, that the Board of Regents, as head of the education department, should have power to revoke a license granted by the division. However, there is general language in the statute (Education Law, §132) empowering the Regents to enforce the licensing law, including its prohibition against the licensing of "obscene, indecent, immoral, inhuman, sacrilegious" films (Education Law, § 122), and it would be an improbably legislative intent that would leave all this solely to a division of the department, with no corrective authority available elsewhere in the State government. It would be anomalous if the Regents, charged by the statute with enforcing the law, could not correct the errors of their subordinate body.

2. As to whether this film can be considered sacrilegious, our own jurisdiction is limited by the *Miller v. Kling* (291 N.Y. 65) rule which requires us to uphold the administrative body's decision if supported by substantial evidence. In other words, if reasonable men could regard the picture as sacrilegious, then we cannot say that the Regents' ruling is wrong as matter of law. Reasonable, earnest and religious men in great numbers have said so, although other earnest religious voices express the other view. There was thus fair basis for the Regents' holding.

[fol. 179] 3. "Sacrilegious", like "obscene" (see *Winters v. New York*, 333 U. S. 507), is sufficiently definite in mean-

ing to set an enforceable standard. That men differ as to what is "sacrilegious" is beside the point—there is nothing in the world which all men everywhere agree in "obscene", yet obscenity laws are universally enforced. Of course, some of the meanings of "sacrilegious" have no possible application to a motion picture, but, according to all the dictionaries and common English usage, the adjective has one applicable meaning, since it includes violating or profaning anything held sacred (see 8 Oxford Dictionary, pp. 18-19; Webster's New Int. Dictionary [2d ed.], unabridged, p. 2195; Black's Law Dictionary, [de luxe ed.], p. 1574). We thus have a statutory term of broad but ascertainable meaning, and, by settled law, the administrative application thereof must be accepted by the courts "if it has 'warrant in the record' and a reasonable basis in law." (*Matter of Mounting & Finishing Co. v. McGoldrick*, 294 N. Y. 104, 108; *Red Hook Cold Storage Co. v. Dept. of Labor*, 295 N. Y. 1, 9).

4. Motion pictures are, it would seem, not excluded from First Amendment coverage (*United States v. Paramount Pictures*, 324 U.S. 131, 166) but, since there was a reasonable ground for holding this film "sacrilegious" (in the meaning which the Legislature must have intended for that term), the film was constitutionally "subject to control" (*Ex parte Jackson*, 96 U.S. 727, 736, cited in *Winter v. New York*, *supra*). It fell within the "well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem" (*Chaplinsky v. New Hampshire*, 315 U.S. 568, 571, 572—italics mine). The *Chaplinsky* decision says that these narrowly limited classes of constitutionally prevent- [fol. 180] able utterances include "the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." That covers this case, and should dispose of any claim of violation of the First Amendment. If not, then any prior censorship at all of any motion picture is unconstitutional, and the floodgates are open.

FULD, J. (dissenting). It may lend perspective to recall that we are here concerned with a motion picture that has

passed the rigid scrutiny of a numerous array of critics of undenied religiousness. There is, of course, no suggestion that "The Miracle" is a product of heathen lands. The story was written by a Roman Catholic and the picture produced, directed and acted solely by Roman Catholics. It was filmed in Italy, and first exhibited in Rome, where religious censorship exists. There, the Vatican newspaper, *L'Osservatore Romano*, weighed its artistry without registering the slightest doubt as to its piety. Then it passed the United States Customs with no voice raised against it.

In 1949 and again in 1950, successive directors of the motion picture division of the State Education Department licensed the film for statewide exhibition. It won the approval of the National Board of Review of Motion Pictures. It drew general acclaim from the press and was designated, as part of a trilogy, the best foreign language film of 1950 by the New York Film Critics, an association of critics of the major metropolitan newspapers. Finally, one important Roman Catholic publication, after deploring "these [fol. 181] highly arbitrary invocations of a police censorship," noted that the film "is not obviously blasphemous or obscene, either in its intention or execution" (*The Commonweal*, March 16, 1951, pp. 567-568; also, March 2, 1951, pp. 507-508), and all Protestant clergymen who expressed themselves publicly—and they constituted a large number representing various sects—found nothing in the film either irreverent or irreligious.

However, as Judge FROESSEL reminds us, the contrary opinion also found strong voice, eventually reaching the ears of the board of regents. After viewing the film, that body revoked and rescinded the license—some two years after it had been granted—invoking as authority therefor section 122 of the Education Law. That statute provides that the motion picture division shall license each moving picture submitted to it unless it is "obscene, indecent, immoral, inhuman or sacrilegious, or is of such a character that its exhibition would tend to corrupt morals or incite to crime." The board of regents decided that the film is "sacrilegious," and its decision was confirmed by the Appellate Division.

Laying to one side for the moment the question as to the

constitutionality of a statute which sanctions the banning of a moving picture on the ground that it is "sacrilegious", I am of opinion that the regents' action was without legislative warrant.

The controlling statute, the Education Law, is significant both for what it says and for what it leaves unsaid. In section 124, entitled "Review by Regents," the legislature expressly gave the regents power to review a determination of the motion picture division *denying* a license—but it conferred no similar power to review the division's *granting* [fol. 182] of a license. By settled rules of construction, that deliberate omission by the legislature clearly indicates that no such authority was intended (see e.g. Sutherland, *Statutes and Statutory Construction* [3d ed. 1943] §§4915-4917). And the more one searches the statute, the more clearly does that appear. For example, the statute expressly authorizes the regents to revoke a permit issued for the exhibition of a scientific or educational film (§125) and to revoke a motion picture license if it was obtained on a false application or if the licensee tampered with the film or if there is a "conviction for a crime committed by the [film's] exhibition or unlawful possession" (§128). But nowhere in the statute is there to be found any general grant of power to the regents to revoke a previously issued license. This omission is also to be contrasted with the further and explicit grant of such a power or revocation by the same Education Law as regards many other types of licenses issued by the Education Department (See, e.g., §6514 [as to doctors]; §6613 [as to dentists]; § 6712 [as to veterinarians]; §6804 [as to pharmacists] §7108 [as to optometrists]; §7210 [as to engineers]; §7308 [as to architects]; §7406 [as to certified public accountants]; §7503 [as to shorthand reporters].) Clearly, the legislature knew how to bestow the power of revocation when that was its purpose.

Even more recent evidence of the legislature's design is at hand. In 1950, the legislature amended the Penal Law to prohibit prosecution, on the ground of obscenity, of a film licensed under the Education Law (Laws 1950, ch. 624, amending Penal Law, §1141). That enactment was inspired by *Hughes Tool Co. v. Fielding* (297 N.Y. 1024, affg. 272 App.

Div. 1048, affg. 188 Misc. 947). It had there been held that such a criminal prosecution was permissible *because* the [fol. 183] Education Law neither provided for nor allowed any direct review by the regents or the courts of a decision of the motion picture division issuing a license. If the legislature had disagreed with that interpretation of the Education Law—clearly indicated at Special Term (188 Misc., at p. 952)—it would undoubtedly have amended the Education Law, not the Penal Law. By depriving the state of the power to prosecute the exhibition of a film once it receives a license, the legislature affirmed, as clearly as it could, that the granting of a license is an act of such implacable finality that it may not be challenged collaterally in a criminal prosecution any more than directly in a civil proceeding.

The legislative scheme so clearly expressed, the board of regents may neither rely upon its status as head of the Education Department to reverse decisions of a subordinate which are not the result of illegality, fraud or vital irregularity (see, e.g., *Butterworth v. Hoe*, 112 U.S. 50, 56, 64; cf. *People ex rel. Finnegan v. McBride*, 226 N.Y. 252, 257; *People ex rel. Chase v. Wemple*, 144 N.Y. 478, 482; *Matter of D. and D. Realty Corp. v. Coster*, 277 App. Div. 668)¹ nor draw from section 132 of the Education Law—which in overall manner gives the board “authority to enforce the provisions and purposes of part two of this article”—an assumption of authority to “review” and revoke the grant of a license by the motion picture division. All that section [fol. 184] 132 was designed to do, and all that it does, is to authorize enforcement. To construe its general language as authorizing review of the granting of a license is to stretch language beyond all permissible limits and to render superfluous and meaningless the very explicit language of section 124 permitting such review only where a license has been denied.

¹ There is no substance to the regents' claim that they were merely correcting the “illegal” action of the motion picture division in licensing a “sacrilegious” picture. Since obviously there was at least reasonable doubt as to whether the film was “sacrilegious”, the decision of the motion picture division could not be condemned as “illegal.”

"A statute must be read and given effect as it is written by the Legislature, not as the court may think it should or would have been written if the Legislature had envisaged all the problems and complications which might arise in the course of its administration. A power not expressly granted by statute is implied only where it is 'so essential to the exercise of some power expressly conferred as plainly to appear to have been within the intention of the legislature. The implied power must be necessary, not merely convenient, and the intention of the legislature must be free from doubt.' (*People ex rel. City of Olean v. W.N.Y. & P.T. Co.*, 214 N.Y. 526, 529). *Lawrence Constr. Corp. v. State of New York*, 293 N.Y. 634, 639).

So, here, the regents' contention that they *must* have power to review and revoke in order to guard against error by the motion picture division in granting licenses, is not persuasive. The fact is that, in the twenty-five years during which the motion picture division has been in the Department of Education, the regents have never before reviewed the grant of a license or even suggested the existence of such a power. Limited as we are to a determination of what the legislature has done, the argument of alleged necessity has no weight in the face of this long-continued practical construction. For this court now to read into the statute a provision which that body chose not to write into it would constitute an uncalled-for intrusion into the sphere of the legislature.

[fol. 185] Even if I were to assume, however, that the statute does confer a power to review and revoke, I would still conclude for reversal. In my view, that portion of the statute here involved must fall before the constitutional guarantee that there be freedom of speech and press. The early decision of *Mutual Film Corp. v. Ohio Indus'l Comm.*, 236 U.S. 230, is urged as conclusively establishing that motion pictures are not within the First Amendment's coverage or protection. The consistent course of decision by the Supreme Court of the United States in recent years, however, persuades me that that early decision no longer has the force or authority here claimed for it.

We are confronted in this case with censorship in its baldest form—a licensing system requiring permission in

advance for the exercise of the right to disseminate ideas *via* motion pictures, and committing to the licensor a broad discretion to decide whether that right may be exercised. Insofar as the statute permits the state to censor a moving picture labelled "sacrilegious," it offends against the First and Fourteenth Amendments of the Federal Constitution, since it imposes a prior restraint—and, at that, a prior restraint of broad and un-defined limits—on freedom of discussion of religious matters. And, beyond that, it may well be that the restraint on the "sacrilegious" constitutes an attempt to legislate orthodoxy in matters of religious belief, contrary to the First Amendment's prohibition against laws "respecting an establishment of religion." (Cf. *Everson v. Board of Education*, 330 U.S. 1, 15; *Illinois ex rel. McCollum v. Board of Education*, 333 U.S. 203, 210).

[fol. 186] The freedoms of the First Amendment are not, I appreciate, absolute, although they are as near to absolutes as our judicial and political system recognizes. But insofar as these freedoms are qualified, the qualification springs from the necessity of accommodating them to some equally pressing public need. Thus, some limited measure of restraint upon freedom of expression may be justified where the forum is the public street or the public square, where the audience may be a "captive" one, and where breaches of the peace may be imminent as the result of the use, or rather the abuse, of fighting words (Cf. *Dennis v. United States*, 341 U.S. 494, 503, et seq.; *Feiner v. New York*, 340 U.S. 315, 319; *Niemotko v. Maryland*, 340 U.S. 268; *Terminiello v. Chicago*, 337 U.S. 1; *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-572; *Cantwell v. Connecticut*, 310 U.S. 296, 308; *Schneider v. State*, 308 U.S. 147, 160). Here, there is no "captive" audience; only those see the pictures who wish to do so, and, then, only if they are willing to pay the price of admission to the theatre. Moreover, if subject matter furnishes any criterion for the exercise of a restraint, I know of no subject less proper for censorship by the state than the one here involved.

The Supreme Court has "consistently condemned licensing systems which vest in an administrative official discretion to grant or withhold a permit upon broad criteria unrelated to proper regulation of public places" (*Kunz v.*

New York, 340 U.S. 290, 294; see, also, *Niemotko v. Maryland*, *supra*, 340 U.S. 268; *Saia v. New York*, 334 U.S. 558; *Cantwell v. Connecticut*, *supra*, 310 U.S. 296; *Hague v. C.I.O.*, 307 U.S. 496; *Lovell v. Griffin*, 303 U.S. 444). "The [fol. 187] State cannot of course forbid public proselyting or religious argument merely because public officials disapprove the speaker's views. It must act in patent good faith to maintain the public peace, to assure the availability of the streets for their primary purposes of passenger and vehicular traffic, or for equally indispensable ends of modern community life" (see *Niemotko v. Maryland*, *supra*, 340 U.S. 268, 282, per FRANKFURTER, J., concurring.)

Invasion of the right of free expression must, in short, find justification in some overriding public interest, and the restricting statute must be narrowly drawn to meet an evil which the state has a substantial interest in correcting. (See *Feiner v. New York*, *supra*, 340 U.S. 315, 319; *Niemotko v. Maryland*, *supra*, 340 U.S. 268; *Winters v. New York*, 333 U.S. 507, 509; *Cantwell v. Connecticut*, *supra*, 310 U.S. 296, 307-308; *Thornhill v. Alabama*, 310 U.S. 88, 97-98, 105). The statute before us is not one narrowly drawn to meet such a need as that of preserving the public peace or regulating public places. On the contrary, it imposes a general and pervasive restraint on freedom of discussion of religious themes in moving pictures, which cannot be justified on the basis of any substantial interest of the state (Cf. *Kunz v. New York*, *supra*, 340 U.S. 290; *Dennis v. United States*, *supra*, 341 U.S. 494, 508-509).

Over a century ago, the Supreme Court declared that "the law knows no heresy and is committed to the support of no dogma * * *." (*Watson v. Jones*, 80 U.S. 679, 728). Just as clearly, it is beyond the competency of government to prescribe norms of religious conduct and belief. That follows inevitably from adherence to the principles of the First Amendment. "In the realm of religious faith, and in that of political belief," it has been said (*Cantwell v. Connecticut*, *supra*, 310 U.S. 296, 310), "sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have

been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

The inherent indefinability, in its present context, of the term "sacrilege" is apparent upon the merest inquiry. At what point, it may be asked, does a search for the eternal verities, a questioning of particular religious dogma, take on the aspect of "sacrilege?" At what point does expression or portrayal of a doubt of some religious tenet become "sacrilegious"? Not even authorities or students in the field of religion will have a definitive answer, and certainly not the same answer. There are more than two hundred and fifty different religious sects in this country, with varying religious beliefs, dogmas and principles (See *Illinois ex rel. McCollum v. Board of Education*, *supra*, 333 U.S. 203, 227, per Frankfurter, J., concurring). With this great contrariety of religious views, it has been aptly observed that one man's heresy is another's orthodoxy, one's "sacrilege," another's consecrated belief. How and where draw the line between permissible theological disputation and "sacrilege?" what is orthodox, what sacrilegious? whose orthodoxy, to whom sacrilegious? In the very nature of things, what is "sacrilegious," will of necessity differ with the philosophy, the training, the education and the background of the particular censor of the moment, the determination whether a film is "sacrilegious" or not, must necessarily rest in the undiscoverable recesses of the official's mind.

[fol. 189] Any possible doubt that the term is essentially vague is dispelled by a reference to the variant and inconsistent definitions ascribed to it by the board of regents and by the Appellate Division and Judge Froessel.

Thus, the regents, frowning upon the dictionary definition as "technical,"² nevertheless assure us that "everyone knows what is meant by this term" and, by way of demon-

² A typical definition of "sacrilege" is that found in Webster's New International Dictionary [2d ed., 1948]:

strating that fact, proceed to define the word as describing a film which "affronts a *large segment* of the population;" offends the sensibilities by ridiculing and burlesquing anything "held sacred by the *adherents of a particular religious faith*"; is "offensive to the religious sensibilities of any element of society." Indeed, any semblance of either general meaning or specific content is, I suggest, abandoned by the regents themselves when they assert that, since "anything is only sacrilegious to those persons who hold the concept sacred" the opinions of non-believers are worthless." By such reasoning, the adherents of a particular dogma become the only judges as to whether that dogma has been offended! And, if that is so, it is impossible to fathom how any governmental agency such as the board of regents, composed as it is of laymen of different faiths, could possibly discharge the function of determining whether a particular film is "sacrilegious."

Judge Froessel and the Appellate Division state that the statutory proscription against the "sacrilegious" is intended to bar any "visual caricature of religious beliefs held sacred by one sect or another" (opinion of FROESSEL, J., p. 12). Though Judge Froessel also defines "sacrilegious" in terms of "attacking" or "insulting" religious [fol. 190] beliefs or treating them with "contempt, mockery, scorn and ridicule"—all words of ephemeral and indefinite content—the basic criterion appears to be whether the film treats a religious theme in such a manner as to offend the religious beliefs of any group of persons. If the film does have that effect, and it is "offered as a form of entertainment," it apparently falls within the statutory ban regardless of the sincerity and good faith of the producer of the film, no matter how temperate the treatment of the theme, and no matter how unlikely a public disturbance or breach of the peace.

The drastic nature of such a ban is highlighted by the fact that the film in question makes no direct attack on, or criticism of, any religious dogma or principle, and it is not

"the crime of stealing, misusing, violating or desecrating that which is sacred, or holy, or dedicated to sacred uses." (See, also, the New Catholic Dictionary [Vatican ed., 1929]).

claimed to be obscene, scurrilous, intemperate or abusive. Nor is there any evidence of any malicious purpose or intention on the part of the producers of the film to revile or even attack Catholic doctrine or dogma, nor any suggestion of any reasonable likelihood of a breach of the peace resulting from the film's exhibition. So broad, indeed, is the suggested criterion of "sacrilege" that it might be applied to any fair and temperate treatment of a psychological, ethical, moral or social theme with religious overtones which some group or other might find offensive to its "religious beliefs."

It is claimed that "the courts have had no problem either with the word 'sacrilegious' or with its synonym, 'profane'" (Opinion of Froessel, J., *supra*, p. 9). The cases to which reference is made, however, involved neither the "profane" in religion nor the "sacrilegious," and the simple fact is that the Supreme Court has never had occasion to pass upon either the one term or the other. The context in which the word "profane" appears in the cases cited (*Winters v. New York*, *supra*, 333 U.S. 507, 510; [fol. 191] *Chaplinsky v. New Hampshire*, *supra*, 315 U.S. 568, 572), as well as the authorities there relied upon (*Cantwell v. Connecticut*, *supra*, 310 U.S. 296, 309-310; *Chafee, Free Speech in the United States* [1941] pp. 149-150), make it evident that the term was used, not as a synonym for "sacrilegious," but as a substitute for "epithets or personal abuse," for swear words and for the other "insulting or 'fighting' words," which "by their very utterance inflict injury or tend to incite an immediate breach of the peace" and "are no essential part of any exposition of ideas" (*Chaplinsky v. New Hampshire*, *supra*, 315 U.S. 568, 572; see also *Cantwell v. Connecticut*, *supra*, 310 U.S. 296, 310; *Chafee, op. cit.*, p. 150). In short, the cases cited have nothing whatsoever to do with the "profane" in religion, and the judges who sat in them were not called upon to give the slightest thought or consideration to the subject with which we are now concerned.

The shortcomings of ambiguous epithets as rigid boundaries are great enough in temporal and political matters (cf. e.g., *Winters v. New York*, *supra*, 333 U.S. 507; *Dennis v. United States*, *supra*, 341 U.S. 494; *Jordan v. De George*,

341 U.S. 223; *Musser v. Utah*, 333 U.S. 95), but they are all the greater when the epithets trench upon areas of religious belief (see, e.g., *Kunz v. New York*, *supra*, 340 U.S. 290; *Saia v. New York*, *supra*, 334 U.S. 558, 567; *Cartwell v. Connecticut*, *supra*, 310 U.S. 296). Indeed, the Supreme Court has gone so far as to hold that the First Amendment's guarantee forbids prior restraint of public discussion that even "ridicules" or "denounces" any form of religious belief. (See *Kunz v. New York*, *supra*, 340 U.S. 290, and see, par-[fol. 192] ticularly, concurring opinion of Frankfurter, J., reported in 340 U.S. at pp. 285-286). In a free society "all sects and factions, as the price of their own freedom to preach their views, must suffer that freedom in others." (*Kunz v. New York*, *supra*, 340 U.S. at p. 301, per Jackson, J., dissenting; see also, *Murdock v. Pennsylvania*, 319 U.S. 105, 116):

Were we dealing with speeches, with handbills, with newspapers or with books, there could be no doubt as to the unconstitutionality of that portion of the statute here under consideration. The constitutional guarantee of freedom of expression, however, is neither limited to the oral word uttered in the street or the public hall nor restricted to the written phrase printed in newspaper or book. It protects the transmission of ideas and beliefs, whether popular or not, whether orthodox or not. A belief does not lose its character as a belief, an idea does not become less of an idea, because, instead of being expressed by the "air-borne voice," the printed word or the "still" picture, it is put forward by a "moving" picture. The First Amendment does not ask whether the medium is visual, acoustic, electronic or some yet unheard-of device. It has readily accommodated itself to other products of inventive genius, to other advances in technology, such as the radio and television. If "The Constitution deals with substance, not shadows," if "Its inhibition was levelled at the thing, not the name" (*Cummings v. Missouri*, 4 Wall. 277, 325), then, surely, its meaning and vitality are not to be conditioned upon the mechanism involved. Of course, it may well be that differences in medium will give rise to different problems of accommodation of conflicting interests (see *Kovacs v. Cooper*, 336 U.S. 77, 96, per Frankfurter, J., concurring).

[fol. 193] But any such accommodation must necessarily be made in the light of fundamental constitutional safeguards.³

One reason for denying free expression to motion pictures, we are told, is that the movies are commercial. But newspapers, magazines and books are likewise commercially motivated, and that has never been an obstacle to their full protection under the First Amendment (See, e.g., *Grosjean v. American Press Co.*, 297 U.S. 233). Again, it is said, the fact that the moving picture conveys its thought or message in dramatic episodes or by means of a story or in a form that is entertaining, makes the difference. But neither novels, magazines nor comic books are made censorable because they are designed for entertainment or amusement. (See, e.g., *Winters v. New York*, *supra*, 333 U.S. 507, 510; *Hannegan v. Esquire, Inc.*, 327 U.S. 146, 153). The Supreme Court made that plain in the *Winters* case, when it declared: "We do not accede to appellee's suggestion that the constitutional protection for a free press applies only to the exposition of ideas. The line between the informing and the entertaining is too elusive for the protection of that basic right. Everyone is familiar with instances of propaganda through fiction. What is one man's amusement, teaches another's doctrine. Though we can see nothing of any possible value to society in these magazines, they are as much entitled to the protection of free speech as the best of literature." (333 U.S. at p. 510).

Whatever may have been true thirty-six years ago when the *Mutual Film case*, *supra*, 236 U.S. at 230, was decided, [fol. 194] there is no reason today for casting the motion picture beyond the barriers of protected expression. Learned and thoughtful writers so opine (see Chafee, *Free Speech in the United States* [1942], pp. 554 et seq.; Ernst, *The First Freedom*, p. 268; Kupferman & O'Brien, *Motion*

³ Whether, for instance, the statute (Education Law, § 122) may be sustained as valid even as a censorship measure insofar as its criterion is the narrow one of "obscenity," is not, of course, before us and need not be considered (Cf. *Chaplinsky v. New Hampshire*, *supra*, 315 U.S. 568, 572; *Near v. Minnesota*, 283 U.S. 697; *Ex parte Jackson*, 96 U.S. 727, 736).

Picture Censorship, 36 Cornell Law Quart. 273; Note, 60 Yale Law Journ. 696; Note, 49 Yale Journ. 87), and the Supreme Court itself has recently so declared (See *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 166; see, also, *Koracs v. Cooper*, *supra*, 336 U.S. 77, 102, per Black, J., dissenting): As Chafee put it (*op. cit.*, p. 545), "In an age when 'commerce' in the Constitution has been construed to include airplanes and electromagnetic waves, 'freedom of speech' in the First Amendment and 'liberty' in the Fourteenth should be similarly applied to new media for the communication of ideas and facts. Freedom of speech should not be limited to the air-borne voice, the pen, and the printing press, any more than interstate commerce is limited to stagecoaches and sailing vessels." And, wrote the Supreme Court (*United States v. Paramount Pictures, Inc.*, *supra*, 334 U.S. 131, 166), "We have no doubt that moving pictures, like newspapers and radio are included in the press whose freedom is guaranteed by the First Amendment."

Every consideration points that conclusion. The *Mutual Film* case should be relegated to its place upon the history shelf. Rendered in a day before the guarantees of the Bill of Rights were held to apply to the states, and when moving pictures were in their infancy, the decision was obviously a product of the view that motion pictures did not express or convey opinions or ideas. Today, so far have times and films changed, some would deny protection for the opposite [fol. 195] reason, for the reason that films are too effective in their presentation of ideas and points of view. The latter motion is as unsupportable as the other and antiquated view; that the moving picture is a most effective mass medium for spreading ideas is, of course, no reason for refusing it protection. If only ineffectual expression is shielded by the Constitution, free speech becomes a fanciful myth. Few would dispute the anomaly of a doctrine that protects as freedom of expression comic books that purvey stories and pictures of "bloodshed and lust" (see *Winters v. New York*, *supra*, 333 U.S. 507, 510), light and racy magazine reading (see *Hannegan v. Esquire, Inc.*, *supra*, 327 U.S. 146, 153) and loudspeaker harangues (see *Saia v. New York*, *supra*, 334 U.S. 558), and yet denies that same protection to the moving picture.

Sincere people of unquestioned good faith may, as in this case, find a moving picture offensive to their religious sensibilities, but that cannot justify a statute which empowers licensing officials to censor the free expression of ideas or beliefs in the field of religion. "If there is any fixed star in our constitutional constellation," the Supreme Court has said (*Board of Education v. Barnette*, 319 U.S. 624, 642), "it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion * * *."

The order of the Appellate Division should be reversed and the determination of the board of regents annulled.

Loughran, Ch. J., Lewis and Conway, JJ., concur with Froessel, J.; Desmond, J., concurs in separate opinion; Fuld, J., dissents in opinion in which Dye, J., concurs.

Order affirmed.

[fol. 196] IN COURT OF APPEALS OF NEW YORK

[Title omitted]

PETITION FOR APPEAL—December 4, 1951

Considering itself aggrieved by the judgment and decree of this Court made and entered October 18, 1951, in the above proceedings, the Petitioner herein hereby prays that an appeal be allowed to the Supreme Court of the United States from said judgment and decree and from each and every part thereof; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by Petitioner; and that the material parts of the record, proceedings, exhibits and papers upon which the said final judgment and decree were based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, Ephraim S. London, Attorney for Petitioner-Appellant, Office & P. O. Address: 150 Broadway, New York, N. Y. (Seal.)

[fol. 197] ~~IN~~ COURT OF APPEALS OF NEW YORK

[Title omitted]

ORDER ALLOWING APPEAL—December 6, 1951

Joseph Burstyn, Inc., Petitioner, having made and filed a petition praying for an appeal to the Supreme Court of the United States from the final judgment and decree of this Court in this cause made and entered on October 18, 1951, and from each and every part thereof, and having presented its assignment of errors and prayer for reversal, and its statement as to the jurisdiction of the Supreme Court of the United States on appeal, pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

It is further ordered that the amount of the appeal bond be and the same hereby is fixed in the sum of five hundred [fol. 198] (\$500) dollars, with good and sufficient surety, and shall be conditioned as may be required by law.

It is further ordered that citation shall issue in accordance with law.

John T. Loughran, Chief Judge of the Court of Appeals. (Seal.)

[fols. 199-200] Citation in usual form omitted in printing.

[fol. 201] IN COURT OF APPEALS OF NEW YORK

[Title omitted]

ASSIGNMENT OF ERRORS—December 4, 1951

Joseph Burstyn, Inc., the Petitioner in the above entitled cause, in connection with its appeal to the Supreme Court of the United States, hereby files the following Assignment of Errors upon which it will rely in its prosecution of the appeal from the judgment and decree of the Court of Ap-

peaks of the State of New York entered in the above cause on October 18, 1951.

The Court of Appeals of the State of New York erred in the following respects:

1. In holding Sections 120, 122, 129 and 131 of the New York Education Law (which prohibit the exhibition of a motion picture film found to be sacrilegious) are not laws respecting the establishment of religion in violation of the First and Fourteenth Amendments to the Constitution of the United States.

[fol. 202] 2. In holding that Sections 120, 122, 129 and 131 of the New York Education Law (which prohibit the public exhibition of a motion picture film deemed sacrilegious by a state government agency) do not inhibit the free exercise of religion and are not for that reason repugnant to the First and Fourteenth Amendments to the Constitution of the United States.

3. In holding that the denial of the right to publicly exhibit Petitioner's motion picture film *The Miracle* on the ground that it is sacrilegious was not a violation of the right of free exercise of religion guaranteed in the First and Fourteenth Amendments to the Constitution of the United States.

4. In holding that the Appellees' determination in this case that *The Miracle* is sacrilegious was not a religious judgment and therefore did not constitute governmental interference in religious matters, in violation of the First and Fourteenth Amendments to the Constitution of the United States.

5. In refusing to hold that the Appellees' suppression of *The Miracle* (by the revocation of the license permitting Appellant to exhibit it) on the ground that the film is sacrilegious is an attempted prescription of the norms of religious belief and religious conduct, in violation of the First and Fourteenth Amendments to the Constitution of the United States.

6. In refusing to hold that the Appellees' determination that *The Miracle* is sacrilegious denoted a preference of the views of one religious sect over that of others, in violation of the constitutional injunction against laws respecting the establishment of a religion.

[fol. 203] 7. In holding that Section 122 of the New York Education Law providing for the denial of a license to publicly exhibit motion picture films "if found sacrilegious" is not so vague and indefinite that its enforcement violated the "due process" clause of the Fourteenth Amendment to the Constitution of the United States.

8. In holding that the denial (by revocation) of a license to exhibit the film *The Miracle* on the ground that it is sacrilegious did not deprive Appellant of property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

9. In holding that Section 122 of the New York Education Law (providing for denial of a license to exhibit motion pictures found sacrilegious) does not delegate legislative authority to the licensors, in violation of the Fourteenth Amendment to the Constitution of the United States.

10. In holding that the meaning of the term sacrilegious, as used in Section 122 of the New York Education Law, is clear and definite and does not (despite the absence of judicial construction or legislative or administrative standard for application) vest in the authorities charged with enforcement the power to determine its meaning and the limits of its application.

11. In holding that Sections 120, 122, 129 and 131 of the New York Education Law (which prohibit the exhibition of a motion picture film until a license therefor has been granted by a board of censors) do not abridge the freedom of speech or of the press, in contravention of the First and Fourteenth Amendments to the Constitution of the United States.

[fol. 204] 12. In holding that motion pictures are a form of entertainment and a business and not a medium of communication within the protection of the First and Fourteenth Amendments to the Constitution of the United States.

13. In holding that the denial of the right to publicly exhibit Petitioner's motion picture film *The Miracle* because the film was found sacrilegious by Appellees was not an abridgment of freedom of speech or of the press in contravention of the First and Fourteenth Amendments to the Constitution of the United States.

14. In holding that Petitioner-Appellant was estopped from asserting that Sections 120, 122, 129 and 131 of the New York Education Law abridge the freedom of the press or of speech in contravention of the First and Fourteenth Amendments to the Constitution of the United States.

Wherefore, Petitioner prays that the final decree and judgment of the Court of Appeals of the State of New York in this case be reversed, and for such other relief as the Court may deem just and proper.

Ephraim S. London, Attorney for Petitioner-Appellant, Office & P. O. Address, 150 Broadway, New York 38, N. Y.

[fol. 205] IN COURT OF APPEALS OF NEW YORK

[Title omitted]

PRAECIPE—December 10, 1951

To the Clerk of the Court of Appeals of the State of New York:

You will please prepare a transcript of the Record in the above entitled cause, to be transmitted to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

Proceedings in the Supreme Court of the State of New York

| | Record on Appeal | Page |
|---|------------------|------|
| 1. Order to Show Cause | | 3 |
| 2. Petition of Joseph Burstyn, Inc. | | 6 |
| 3. Supporting Affidavit of Joseph Burstyn | | 20 |
| 4. Answer | | 28 |
| 5. Order Transferring Cause to Appellate Division | | 98 |
| 6. Stipulation with respect to Communications to the Board of Regents | | 130 |
| [fol. 206] 7. Order of the Appellate Division Denying Petition | | 137 |

| | |
|---|-----|
| | 177 |
| 8. Opinion of the Appellate Division | 139 |
| 9. Order of the Appellate Division Granting Leave to the Court of Appeals | 135 |

Proceedings Before the Board of Regents of the State of New York

(Returned with and made part of the Answer to the Petition)

| | |
|---|----|
| 10. Extract from Minutes of Meeting of the Board of Regents | 42 |
| 11. Order to Show Cause (issued by the Board of Regents) | 44 |
| 12. Affidavit of Joseph Burstyn, submitted to Regents | 66 |

Description of Exhibits and Excerpts therefrom, attached to Affidavit of Joseph Burstyn

Printed Copies
of Exhibits
pp. i-xxii

Exhibits Attached to Affidavit of Joseph Burstyn

| | |
|--------------|----|
| Exhibit 1 | 72 |
| Exhibit 2 | 74 |
| Exhibit 3 | 77 |
| Exhibit 6 | 5 |
| Exhibit 7 | 16 |
| Exhibit 8 | 18 |
| Exhibit 9 | 19 |
| Exhibit 12 | 23 |
| Exhibit 13 | 24 |
| Exhibit 14 | 26 |
| Exhibit 16 | 28 |
| Exhibit 20 | 37 |
| Exhibit 21 | 39 |
| Exhibit 23 | 42 |
| Exhibit 26 | 46 |
| Exhibit 34 | 63 |
| Exhibit 53-A | 90 |

| | |
|--------------------|-----|
| Exhibit 53-E | 96 |
| Exhibit 63 | 125 |
| Exhibit 64 | 127 |
| Exhibit 75 | 150 |
| Exhibit 76 | 151 |

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|---|----|
| 13. Letter from Ephraim S. London to Charles A. Brind, Jr., and Reply | 90 |
| 14. Report of Special Committee of the Board of Regents | 79 |
| [fol. 207] 15. Report and Order of the Board of Regents | 87 |

Proceedings in the Court of Appeals of the State of New York

| | |
|--|-----|
| 16. Notice of Appeal to the Court of Appeals | 133 |
| 17. Stipulation with respect to Exhibits | 149 |
| 18. Order of the Court of Appeals Affirming Judgment of the Appellate Division | |
| 19. Order of the Supreme Court of the State of New York Entering Judgment of the Court of Appeals | |
| 20. Opinion of the Court of Appeals | |
| 21. Petition for Appeal to the Supreme Court of the United States | |
| 22. Order Allowing Appeal | |
| 23. Citation on Appeal | |
| 24. Assignment of Errors | |
| 25. Statement as to the Jurisdiction of the Supreme Court | |
| 26. Statement directing Attention to Rule 12, Paragraph 3, of the Rules of the Supreme Court | |
| 27. Acknowledgment of Receipt and Acceptance of Service of Papers on Appeal to the United States Supreme Court, and of this Praecipe | |
| 28. This Praecipe | |

The film of the motion picture The Miracle shall be physically delivered and deposited, in accordance with Rule 18, paragraph 1, of the Rules of the Supreme Court of the United States, and shall if request is made, be exhibited to

the Supreme Court of the United States as an Exhibit on this appeal.

The transcript of the Record to be filed in the Supreme Court of the United States shall be prepared as required [fol. 208] by law and the Rules of this Court and the Rules of the Supreme Court of the United States, to be filed in the office of the Clerk of the Supreme Court of the United States in Washington, D. C., on or before the 15th day of January, 1952.

(Sgd.) Ephraim S. London, Attorney for Petitioner-Appellant, 150 Broadway, New York 38, N. Y.

[fol. 209] IN COURT OF APPEALS OF NEW YORK

[Title omitted]

COUNTER-PRAECIPE—December 18, 1951

To the Clerk of the Court of Appeals of the State of New York:

In preparing the transcript of record of the above-entitled cause on the appeal of Petitioner-Appellant, please include in said transcript the following:

Proceedings in the Supreme Court of the State of New York

Record on Appeal
Page.

- | | |
|--|----|
| 1. Order to Show Cause (Special Term, Exhibit 3) | 47 |
| 2. Minutes of meeting of a sub-committee of the Board of Regents of the State of New York held at the building of the Association of the Bar of the City of New York on January 30, 1951 at 3 P.M. (Special Term, Exhibit 4) | 50 |
| 3. Statement of John C. Farber, Counsel for Joseph Burstyn, Inc. (Special Term, Exhibit 5) | 63 |

4. Italian dialogue, English translations
and English sub-titles (Special
Term, Exhibit 12)

101

[fols. 210-212] 5. Acknowledgement of receipt of counter-praeceipe.

6. This counter-praeceipe.

The communications received by the Board of Regents prior to its determination in this matter to which reference is made in the stipulation designated as No. 6 of the proceedings in the Supreme Court in the praeceipe of petitioner-appellant, shall be physically delivered and deposited in accordance with Rule 18, paragraph 1 of the Rules of the Supreme Court of the United States, and shall be exhibited to the Supreme Court of the United States as an exhibit on this appeal.

Dated, Albany, N. Y., December 18, 1951.

Nathaniel L. Goldstein, Attorney General of the State of New York, State Capitol, Albany, New York;
Wendell P. Brown, Solicitor General of the State of New York, and Charles A. Brind, Jr., Counsel to the Board of Regents of the University of the State of New York and State Education Department, Education Building, Albany, New York, Attorneys for Respondents-Appellees.

[fol. 213] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 522

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION
OF RECORD—Filed January 22, 1952

The Appellant adopts its Assignment of Errors heretofore filed herein as its statement of the Points to be Relied upon in this Court.

Appellant designates the following portions of the Record as filed in this Court as necessary to be printed for the consideration of the points to be relied upon:

Proceedings in the Supreme Court of the State of New York

| | Record on Appeal |
|---|------------------|
| | Page |
| 1. Order to Show Cause | 3 |
| 2. Petition of Joseph Burstyn, Inc. | 6 |
| 3. Supporting Affidavit of Joseph Burstyn | 20 |
| 4. Answer | 28 |
| 5. Order Transferring Cause to Appellate Division | 98 |
| 6. Stipulation with respect to Communications to the Board of Regents | 130 |
| [fol. 214] 7. Order of the Appellate Division Denying Petition | 137 |
| 8. Opinion of the Appellate Division | 139 |

Proceedings before the Board of Regents of the State of New York

(Returned with and made part of the Answer to the Petition)

| | |
|--|----|
| 9. Extract from Minutes of Meeting of the Board of Regents | 42 |
| 10. Order to Show Cause (issued by the Board of Regents) | 44 |
| 11. Affidavit of Joseph Burstyn, submitted to Regents | 66 |

Printed Copies
of Exhibits

Description of Exhibits and Excerpts therefrom, attached to Affidavit of Joseph Burstyn

pp. 1 thru xxii

Exhibits Attached to Affidavit of Joseph Burstyn

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| Exhibit 1 | 73 |
| Exhibit 2 | 75 |
| Exhibit 3 | 78 |

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|---|-----|
| Exhibit 6 | 5 |
| Exhibit 7 | 16 |
| Exhibit 8 | 18 |
| Exhibit 9 | 19 |
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| Exhibit 23 | 42 |
| Exhibit 26 | 46 |
| Exhibit 34 | 63 |
| Exhibit 53-A | 90 |
| Exhibit 53-E | 96 |
| Exhibit 75 | 150 |
| Exhibit 76 | 151 |
| 12. Letter from Ephraim S. London to Charles A. Brind, Jr., and Reply | 90 |
| 13. Report and Order of the Board of Regents | 87 |
| [fol. 215] Proceedings in the Court of Appeals of the State of New York | |
| 14. Notice of Appeals to the Court of Appeals | 133 |
| 15. Stipulation with respect to Exhibits | 149 |
| 16. Order of the Court of Appeals Affirming Judgment of the Appellate Division | |
| 17. Order of the Supreme Court of the State of New York Entering Judgment of the Court of Appeals | |
| 18. Opinion of the Court of Appeals | |
| 19. Petition for Appeal to the Supreme Court of the United States | |
| 20. Order Allowing Appeal | |
| 21. Citation on Appeal | |
| 22. Assignment of Errors | |
| 23. Statement as to the Jurisdiction of the Supreme Court | |

24. Statement directing Attention to Rule 12, Paragraph 3, of the Rules of the Supreme Court
25. Acknowledgment of Receipt and Acceptance of Service of Papers on Appeal to the United States Supreme Court, and of Praecipe
26. Praecipe
27. Counter-Praecipe

Dated, New York, January 15, 1952.

Ephraim S. London, Counsel for Petitioner-Appellant, 150 Broadway, New York 38, N. Y.

[fol. 216] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

[Title omitted]

STATE OF NEW YORK,

County of New York, ss:

Agatha J. McCurrach, being duly sworn, deposes and says that she is employed by the attorney for the above named Petitioner-Appellant herein. That on the 15th day of January, 1952, she served the within Statement of Points to be Relied upon and Designation of Record upon Dr. Charles A. Brind, Jr., counsel for the above named Respondents-Appellees by depositing a true copy of the same securely enclosed in a post-paid wrapper in a Post-Office Box regularly maintained by the United States Government at 150 Broadway, New York, in said County of New York, directed to said counsel for the Respondents-Appellees at State Education Building, Albany, N. Y., that being the address within the state designated by him for that purpose upon the preceding papers in this action, or the place where he then kept an office, between which places there

[fols. 217-220] then was and now is a regular communication by mail.

Deponent is over the age of 21 years.

Agatha J. McCurrach.

Sworn to before me this 21st day of January, 1952.
Ephraim London, Notary Public, State of New
York, No. 31-7589800. Qualified in New York
County. Cert. Filed with N. Y. Co. Clk. & Reg.
Commission Expires March 30, 1952.

[fol. 221] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM

195

[Title omitted]

COUNTER-DESIGNATION OF RECORD—Filed January 25, 1952

The Respondents-Appellees designate the following additional portions of the record as filed in this Court as necessary to be printed for the consideration of the appeal herein:

Proceedings in the Supreme Court of the State of New York

Record on Appeal
Page

1. Order to Show Cause (Special Term, Exhibit 3) 47
2. Minutes of meeting of a sub-committee of the Board of Regents of the State of New York held at the building of the Association of the Bar of the City of New York on January 30, 1951 at 3 P. M. (Special Term, Exhibit 4) 50
3. Statement of John C. Farber, Counsel for Joseph Burstyn, Inc. (Special Term, Exhibit 5) 63
4. Italian dialogue, English translations and English sub-titles (Special Term, Exhibit 12) 101

[fol. 222] Proceedings Before the Board of Regents of the
State of New York

(Returned with and Made a Part of the Answer to the
Petition)

5. Report of Special Committee of the
Board of Regents

79

Dated, Albany, N. Y., January 23, 1952.

Nathaniel L. Goldstein, Attorney General of the State
of New York, State Capitol, Albany, New York;
Wendell P. Brown, Solicitor General of the State
of New York, of Counsel, and Charles A. Brind,
Jr., Counsel to the Board of Regents of the Uni-
versity of the State of New York and State Educa-
tion Department, Education Building, Albany,
New York, Attorneys for Respondents-Appellees.

[fols. 223-225] Acknowledgment of Service—(Omitted in
Printing)

[fol. 226] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1951

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—February 4, 1952

The statement of jurisdiction in this case having been
submitted and considered by the Court, probable jurisdic-
tion is noted.

(236)